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REPORTS OF COMMITTEES

OF THE

HOUSE OF REPRESENTATIVES,

MADE

DURING THE THIRD SESSION

OF THE

THIRTY-FOURTH CONGRESS:

PRINTED BY ORDER OF THE HOUSE OF REPRESENTATIVES.

IN THREE VOLUMES.

Volume 1, No. 1 to 174.
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REPORTS OF COMMITTEES

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34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1.

JOHN H. HORNE.

[To accompany Senate bill 46.]

DECEMBER 11, 1856.

Mr. GREENWOOD, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition and papers of John H. Horne, of Mississippi, make the following report:

Mr. Horne became the purchaser of certain Indian reservations under the treaty of Dancing Rabit creek, and paid to the Indians, according to contract, fifty cents per acre for the land so purchased. Afterwards, the President of the United States (General Jackson) directed the patents to be withheld until said Horne should pay an additional sum of seventy-five cents per acre. This Horne agreed to do. In December, 1838, A. A. Kincannon, esq., was appointed an agent by the President to investigate, adjust, and settle the matters in dispute growing out of the purchase of these reservations. To this agent Horne paid the additional seventy-five cents per acre, and Kincannon reported the payment to the department. He failed, however, to account for the money, and subsequently died insolvent. The department refused to acknowledge the validity of the payment, and required Horne again to pay seventy-five cents per acre for the land, which he did—protesting that it was unjust. The official correspondence exhibits the facts that Kincannon was the agent of the government—that he received the money in December, 1839, and that no objection was made to its reception until March, 1843.

Then, for the first time, the Secretary of War notified the agent that the currency in which the payment was made had depreciated, and that the government would not receive it. The committee think the last payment was improperly demanded, and report a bill for the relief of the petitioner. An official letter from the Commissioner of Indian Affairs is appended to this report, as follows:

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, December 28, 1854.

SIR: In reply to the inquiries made in your letter of the 26th instant, on behalf of the Committee of Indian Affairs of the Senate, I have the honor to state as follows:

I. The papers in the cases of Wanayabe (or Nanayaba,) Pashonawabi, Achatonabe, and Ibakahaba, to which your inquiries refer, show that John H. Horne paid a small fraction over fifty cents per acre to said Indians for the tracts of land reserved to them respectively under the provisions of the 19th article of the Choctaw treaty of 1830; and—

II. That he was subsequently required to pay seventy-five cents per acre, to make up the price of $1 25 per acre, under a decision of President Jackson; and, it appears, did pay that sum to Colonel A. A. Kincannon, an agent of the government, as appears from said agent's report of December 7, 1839, to Commissioner Crawford.

III. In consequence, however, of the money so paid having been in a currency which had depreciated, the Secretary of War, in March, 1843, decided that, as a condition precedent to the approval of said deeds, the purchasers, or their assignees, should pay into this office, in specie or its equivalent, the several sums required by Colonel Kincannon to make the price of the lands equal to $1 25 per acre; and, to enable them to do so, Colonel Kincannon was requested to return the money deposited with him to the depositors. On March 10, 1343, he acknowledged the receipt of the letter communicating the Secretary's decision, and promised that the matter should receive his attention without unnecessary delay; but, since then, nothing further has been received from Colonel Kincannon on the subject.

The department having adhered to the decision above referred to, Mr. Horne, in October, 1850, in compliance therewith, enclosed a draft for $657 50, the sum required by Colonel Kincannon; whereupon the four deeds were reported for approval in November, 1850, and received President Fillmore's approval December 9, 1850.

IV. One dollar and twenty-fine cents per acre was the minimum required under the decision of President Jackson as a condition precedent to the approval of the sale of Choctaw reserves; although, where the evidence adduced showed that the land sold was worth more than that sum, evidence of its payment to the reservee or his heirs was required as a condition precedent to the approval of the sale.

According to request, the papers which accompanied your letter are herewith returned.

Very respectfully, your obedient servant,

GEORGE W. MANYPENNY,
Commissioner.

Hon. A. G. BROWN, *United States Senate.*

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 2.

ARIZONA—ORGANIZATION OF TERRITORY OF.

JANUARY 12, 1857.—Ordered to be printed.

Mr. MORRILL, from the Committee on Territories, gave notice of his intention to make the following

REPORT.

The Committee on Territories, to whom was referred the "memorial of the people of the southwestern part of the Territory of New Mexico, praying for the organization of a new Territory," and also of "the proceedings of the convention of the people of the southwestern part of the Territory of New Mexico to organize a separate Territory," have had the same under consideration, and report as follows, to wit:

The remoteness of the western portion of the Territory from the capital and the more populous eastern portion of the Territory, and its increased extent consequent upon the annexation of what is commonly called the *Gadsden Purchase,* in A. D. 1853, seems to have left the inhabitants without much care of the local government, and still less of the general government. The few lines which compose the brief act of Congress *approved August* 4, 1854, "declaring the southern boundary of New Mexico," by which the then recently acquired territory was incorporated with the Territory of New Mexico, appears to be the first and last notice the people there have received since their allegiance has been changed from Mexico to the United States.

It appears from the papers as above referred to, and from other evidence submitted to the committee, that the people of the western portion of New Nexico complain—

First. That they have not been permitted to exercise the right of freemen under the laws and Constitution of the United States.

Second. That they have had no courts, laws, or magistrates.

Third. That they are isolated, cut off, and among savage tribes, with no legal organization, and without any of the privileges of citizenship.

Fourth. That though nominally in the county of Doña Ana, in the Territory of New Mexico, they have never had the benefit of laws or civil officers, nor have they any protection for life, liberty, or property.

Fifth. That the vast extent of the present Territory of New Mexico, and the great natural basins between the eastern and western portions of the same, *will forever present adverse* interests, and prevent the *harmonious action of either a territorial* or State government.

They also pray that measures shall be taken for the speedy settlement of land titles, for the survey of the public lands, for the protection of mining interests, for the establishment of a post route, and the subjugation of the hostile tribes of Indians which infest the country; and they also pray that Congress will admit Mr. N. P. Cook, of Arizona, the delegate elect, to a seat in the House of Representatives, to all the privileges of delegates from other Territories.

This long list of grievances, as set forth by the people of that portion of New Mexico called Arizona, and which there is no reason to doubt are for the major part real grievances, certainly requires an early remedy. Whether a new Territory should be established, or whether other legislative action calculated to remove the chief causes of complaint should be resorted to, was the first point to be determined in the discussion by the committee.

From the statements given to the committee by the most competent available witnesses, there appears no reliable data upon which to found an accurate estimate of the present numbers of the white population in that portion of the Territory which seeks a separate organization. The highest supposition is, that it reaches from *eight to ten thousand*, and the lowest is from *two to three thousand*. A medium between these suppositions would fix the present number at from *five to seven thousand* of white inhabitants. This number is deemed too small by the committee, unless for the gravest reasons, to warrant the large expenditure which a new territorial government would require, especially when it is believed the chief advantages sought may be had in a more economical way.

It is to be presumed that the eastern portion of New Mexico will be prepared at no distant day for admission into the Union as a State. When the Territory is divided for that purpose, as it unquestionably will be, *then* would seem to be the proper time for the establishment of a new territorial government. Such a delay, if the remedies proposed by the committee shall be adopted, will subject the memorialists to very slight remaining inconveniences, and these, in the natural order of events, can remain but for a brief time only.

The committee have, therefore, arrived at the conclusion that a bill to establish a separate judicial district south of the Gila, and to create the office of surveyor general therein, to provide for the adjudication of certain land claims, to grant donations to actual settlers, to survey certain lands, and to provide for the representation of the inhabitants of "the Gadsden Purchase" in the territorial legislature of New Mexico, would be all the legislative redress, with mere minor exceptions, that the case requires; and they report a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 3.

SHADE CALLOWAY.

[To accompany bill H. R. No. 586.]

DECEMBER 12, 1856.

Mr. E. B. WASHBURNE, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred the petition of Shade Calloway, claiming compensation for work done under contract on the Tennessee river, having had the same under consideration, submit the following report:

On the 16th September, 1853, the petitioner made a contract with Brevet Lieutenant Colonel J. McClellan, topographical engineers, then in charge of the improvement of the Tennessee river, for the construction of a dam at the head of Ross' island, to be two feet high and 200 yards long, for which he was to be paid the sum of $1,500. The dam was to be completed by the 30th November, 1853, "if the high water does not prevent."

The contractor commenced work on the dam, but the high water prevented its completion during the fall of 1853. In the following summer, as soon as the condition of the river would permit, he resumed the work, and constructed one hundred and eighty yards of the dam, in strict compliance with the terms of the contract. At this stage of the work, in August, 1854, Colonel McClellan ordered it to be suspended, for the reason that the appropriation made by Congress was not sufficient to complete it.

Colonel McClellan died on the 1st September, 1854, without having reported to the department the condition of the work done under the said contract; the Secretary of War appointed R. W. W. Byrd, who had been an assistant under Colonel McClellan, to take charge of and close "the accounts and affairs connected with the improvement of the Tennessee river." This officer duly approves and certifies the petitioner's account for $1,350, which is the proportional amount due for the work done in pursuance of the contract. This certificate is appended to this report.

The affidavits of Samuel C. Davis, James Lewelling, John Long, and John Finley, fully prove the faithful execution of the work according to the terms of the contract; and the official certificate of Mr. Byrd, and the testimony of J. E. S. Blackwell, one of the commis-

sioners of the United States appointed for this very work, establishes the fact that no payment was made to Calloway, or to any other person for him. But this latter fact also sufficiently appears in the accounts of the work, for it is not claimed that any payment was made.

The committee also append the letter of the Third Auditor of the Treasury, dated 19th November, 1855, in which all the material facts of the case are admitted, but in which the certificate of the agent of the United States, R. W. W. Byrd, is discredited, because not sworn to, and for the reason that Colonel McClellan's reports to the department do not give information of this particular part of the work under his charge. This omission, however, is fully accounted for by the sudden death of that officer, which took place very soon after he had ordered the work to be suspended. But the objections of the auditor are based chiefly upon the absence of proof, and it is due to him to state that the affidavits hereunto appended were not before him, as their dates will show.

It is apparent, from the Auditor's letter, that the condition of the appropriation fully justified the contract at the time the latter was made, and during the progress of the work. The contractor had no means of ascertaining the condition of the funds, and perhaps even the officer in charge himself could not accurately proportion the different parts of the improvement to the sum in hand; but there can be no good reason why this bill alone should remain unpaid.

The committee are of opinion that the claim of the petitioner is established beyond all controversy, and they, therefore, report a bill for his relief.

"The United States to Shade Calloway.....Dr.

("On account of Tennessee river improvements.)

"For building one hundred and eighty yards of dam at Ross' island, in Tennessee river..... $1,350 00"

I certify that the above account is correct; that the sum, thirteen hundred and fifty dollars, is the proportionate value of above work, Shade Calloway having contracted to build a uniform dam two hundred yards in length for fifteen hundred dollars; that the work was discontinued by order of Lieutenant Colonel Captain McClellan in charge; that above work is done agreeable to articles of contract, and that the sum of thirteen hundred and fifty dollars is due Shade Calloway on account of above.

R. W. W. BYRD,
Agent for United States.

[See report on this claim made to the Secretary of War on the 19th of November, 1855.]

Contract entered into this day between Shade Calloway, of Knox *county, Tennessee,* of the first part, and Lieutenant Colonel J. Mc*Clellan, agent of the* United States of the second part.

I, Shade Calloway, of the county and State aforesaid, agree and contract to build a dam at the head of Ross' island in the Tennessee river, the said dam to be two (2) feet high and two hundred (200) yards long, and in case a greater length and height are found to be necessary, then the additional length and height to be built at the same rate; the dam to be built of straight logs, two-thirds white or post oak, and one-third pine or poplar; the ties to be of white or post oak; the timber to be framed as the superintending engineers may direct, and the dam to be filled with rock to the top of the timber; large rock to be laid next to the timber facing the current of the river, and the upper layer of rock to be of Mary rock; the timbers to be fastened together by locust pins twenty-two inches long and two inches in diameter; the dam to be completed by the 30th of November, 1853, if the high water does not prevent it; in consideration of which, I, John McClellan, agent as aforesaid, the work being done according to the requirements above, bind myself to pay to the said Calloway the sum of fifteen hundred dollars; in testimony of which we hereunto affix our hands and seals this 16th day of September, 1853. I furnish the timber.

SHADE CALLOWAY, [SEAL.]
J. McCLELLAN, [SEAL.]

Witnesses: JAMES COX.
F. A. CHAPMAN.

Directions for building dams on Tennessee river.

1st. No timber will be used that is not of the following dimensions and kinds.

The string or side pieces to be twelve inches in diameter at the smallest end, two-thirds of white or post oak and one-third pine or poplar.

The ties to be eight-feet long and six inches in diameter at the smallest end.

All the timber to be straight, and free from wind shakes.

2d. Framing the timber and putting it together.

The trenails for the ties will be cut in the side pieces at distances of six feet from centre to centre, they will be six inches wide on the outside of the side pieces, and five inches wide on the inside, and they will be five inches deep. The necks of the ties will be cut to fit the trenails tight enough to require to be driven into them with a heavy sledge.

The side pieces will be so laid that the middle of the logs in the upper tier shall be over the cap or joints of the tier below. The side pieces will have caps of eighteen inches, and through each cap there will be driven two pins of seasoned white oak two inches in diameter and twenty-two inches long.

The side pieces will be fastened together with seasoned white oak pins, two inches in diameter and twenty-two inches long, driven into them at distances of five feet from each other.

The side pieces will be laid the small end of one and but of the one above it together, and if they do not fit closely, then they will be hewed to fit closely.

3d. Heavy rocks will be selected to fill the cribs, the largest will be laid against the face of the dam next the current, the top of the dam will be covered with large rock, none of which will project more than six inches above the top of the timber, the upper ties being covered with rock. There will be small green brush intermixed with the rock, and the intervals between the large rock on the top of the dam will be filled with small rock.

The foregoing directions will be strictly observed.

J. McCLELLAN,
Bvt. Lieut. Col., Capt. Top. Engineers.

The dam to be two feet high and two hundred yards long, and in case a greater length or height is proved to be necessary, then the length or height to be built at the same rate.

STATE OF TENNESSEE, } *ss.*
Knox county,

J. E. S. Blackwell, a credible witness, whose evidence would be taken in any court of justice in the State aforesaid, personally appeared before me, an acting justice of the peace of and for the county and State aforesaid, and made oath, in due form of law, that he was one of the commissioners appointed by the government of the United States, under Colonel John McClellan, in the improvements of the Tennessee river, in the years 1853–'54, under an act of Congress passed in 1853, and continued as such commissioner until the said improvements were abandoned by the said McClellan for want of funds. Affiant further states that the said McClellan made a contract, in the name of the United States government, with one Shade Calloway, for the improvement of said Tennessee river at Ross' island, for which he, the said McClellan, did not pay the said Calloway nor any other person, for the reason that the said McClellan was out of funds, (the word *island* interlined before signed.)

J. E. S. BLACKWELL.

Sworn to and subscribed before me, this 28th day of March, 1856.

ZAC. BOOTHE,
Justice of the peace for Knox county, and State of Tennessee.

STATE OF TENNESSEE, } *ss.*
Knox county,

I, George M. White, clerk of the county court of Knox county, certify that Zac. Boothe, whose name appears to the within affidavit, was, at the time of signing the same, an acting justice of the peace for Knox county, and that full faith and credit are due to all his acts as such, and being well acquainted with said justice, I believe the within signature to be genuine.

In testimony whereof, I have hereunto set my hand and affixed the *seal of my office this* 28th day of March, 1856.

GEORGE M. WHITE, [L. S.]
Clerk of Knox county court.

STATE OF TENNESSEE, } ss.
Knox county,

I, Thomas Rodgers, chairman of the county court of Knox county, certify that George M. White, whose name appears to the above certificate, was, at the time of signing the same, clerk of the county court of Knox county, and that full faith and credit are due to all his acts as such.

Given under my hand this 29th day of March, 1856.

THOMAS RODGERS,
Chairman of Knox county court.

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STATE OF TENNESSEE, } ss.
Sevier county,

I, B. M. Chandler, clerk of the county court of Sevier county, do hereby certify that James M. Evans, whose genuine signature appears to the foregoing affidavit, is and was, at the time of signing the same, an acting justice of the peace for said county, duly sworn and commissioned, and that all of his acts are entitled to full faith and credit.

Given under my hand and private seal, having no seal of office, this 5th day of April, 1856.

B. M. CHANDLER, *Clerk*, [L. S.]

—

STATE OF TENNESSEE, } ss.
Sevier county,

I, Morgan Davis, chairman of the county court of Sevier county, do certify that B. M. Chandler, whose name appears to the foregoing certificate, is clerk of said county court, and was at the time it bears date.

Given under my hand and seal this 5th day of April, 1856.

MORGAN DAVIS,
Chairman of Sevier county court.

—

STATE OF TENNESSEE, } ss.
Sevier county,

Personally appeared before me, an acting justice of the peace of and for the county and State aforesaid, Samuel C. Davis and James Lewelling, creditable witnesses, known to be so by me, whose evidence would be received in any court of justice, and made oath, in due form of law, that in the month of October, 1853, they were working with one Samuel Pickins putting a dam in the Tennessee river at Ross' island, under a contract made by one Shade Calloway with Lieutenant Colonel John McClellan, on the part of the United States. Affiants further state that in the latter part of the month of October, 1853, the said Pickins was compelled to suspend any further work on said

dam, by reason of a rise of the Tennessee river, which continued too high to operate on said works the remainder of the season.

SAMUEL C. DAVIS,
JAMES LEWELLING.

Sworn to and subscribed before me, this 31st day of March, 1856.

JAMES M. EVANS,
Justice of the peace for Sevier county.

STATE OF TENNESSEE, }
Sevier county, } *ss.*

Personally appeared before me, an acting justice of the peace of and for the county and State aforesaid, John Finley and John Long, two creditable witnesses, whose evidence would be taken in any court of justice, and made oath, in due form of law, that they were employed and working with one Samuel Pickins at building a dam in the Tennessee, at the head of Ross' island, in the Tennessee river, under a contract made by one Shade Calloway with Lieutenant Colonel John McClellan, on behalf of the United States government. Affiants further state that they have carefully examined a copy of said contract, now before them, marked B, and the instructions of the said McClellan, marked C; that said dam was built and completed according to said instructions and contract to the extent of one hundred and eighty yards, when the further prosecution of said work was suspended by said McClellan for want of funds; that was in the month of August, 1854.

JOHN LONG,
JOHN FINLEY.

Sworn to and subscribed before me, this 1st day of April, 1856.

J. M. EVANS,
Justice of the peace for Sevier county.

TREASURY DEPARTMENT,
Third Auditor's Office, November 19, 1855.

SIR: A communication to you, dated September 29, 1855, from Messrs. Stanton & Walker, attorneys, relative to an account of Shade Calloway, of Tennessee, for building a dam at Ross' island, in the Tennessee river, having been referred by you on the 29th of September to this office for report, I have the honor, in reply, to submit the following:

By a contract entered into with Brevet Lieutenant Colonel J. McClellan, topographical engineers, dated September 16, 1853, and which is on file in the office of the Second Comptroller, Shade Calloway stipulated to build a dam two feet high and two hundred yards long at the *head of Ross' island,* in the Tennessee river, to be completed by

November 30, 1853, if the high water should not prevent it; the materials to be used in the construction of said dam, and the manner in which it was to be built, being described in the contract; and for which he was to receive the sum of fifteen hundred dollars, ($1,500,) provided the work should be done according to the stipulated requirements.

Colonel McClellan died September 1, 1854, nine months after the above work was to have been completed. His accounts and affairs connected with the works for improvements in the navigation of the Tennessee river were, by the authority of the Secretary of War, placed in charge of R. W. W. Byrd, a clerk and assistant engineer who had been in his employ, in order to be closed; and on December 20, 1854, Mr. Byrd, it appears, transmitted to the Topographical Bureau, whence it was subsequently sent to this office, an account of the said Calloway "For building 180 yards of dam at Ross' island, in Tennessee river, $1,350;" twenty yards less being charged for than the number of yards stipulated to be built. Mr. Byrd certifies that the account is correct, that the work was done agreeable to the articles of contract, that it was discontinued by order of Lieutenant Colonel McClellan in charge, and that the above named sum is due to the said Calloway on account of the work referred to.

It is not stated at what time, or for what reason, the order was given for the discontinuance of the work. It will be seen, however, that by the terms of the contract the dam was to have been completed, if not prevented by high water, by November 30, 1853, (about two and a half months after the date of the contract,) which renders it probable that the part claimed to have been built was completed prior to the date above mentioned; but if not, its hould have been finished in the spring or early part of the summer thereafter—the accounts of Colonel McClellan indicating that other works on the same river were resumed in the latter part of May, 1854. This work, then, must have been discontinued either in the fourth quarter of 1853, or second quarter of 1854; for to suppose a date later than the last mentioned would involve the supposition that the terms of the contract relative to the time specified for the completion of the dam had been disregarded by the claimant. Why, then, was this account not paid when the order was given to stop the work.

By a reference to the accounts of Colonel McClellan, it is found that of the funds appropriated for improvements in the navigation of the Tennessee river, he had on hand at the beginning of the fourth quarter of 1853, the sum of $3,061 31, and that, in addition thereto, he received during the quarter from the treasury the sum of $12,399 00—making a total of $15,459 31; of which he expended in the same quarter $14,620 47—leaving in his hands at the close of the fourth quarter of 1853, $838 84. In the second quarter of 1854 he received from the treasury $8,841 00, making, together with the balance in his hands, $9,679 84; of which he expended during the same quarter $6,170 71—leaving on hand, at the beginning of the third quarter of 1854, an unexpended balance of $3,509 13. Subsequently he received from the treasury *$3,183 00 on the 25th* of July, and on the 14th of *August thereafter the balance of the* appropriation, amount-

ing to $2,508 00—making, with the balance on hand at the beginning of the quarter, $9,200 13. Of this amount $8,543 27 appears to have been disbursed prior to his death on September 1, 1854—leaving an apparent balance of $756 86 unexpended.

From the foregoing it is evident that, if the order for the discontinuance of the work in question was given either in the fourth quarter of 1853, or in the second quarter of 1854, Colonel McClellan had then on hand sufficient means to have made payment therefor. At the close of the second quarter of 1854 he had on hand more than $3,000; and in the latter part of July next thereafter, he received a further sum of more than $3,000; and about the middle of the succeeding month (August) a still further sum of $2,508; and with the means thus at his disposal, it is not understood why he should have omitted to pay this account, if the terms of the contract had been complied with so far as permitted by himself. It is true that the funds referred to were afterwards nearly all expended; but this liability being incurred under a contract made in 1853, must, therefore, have been foreseen; and if the amount had been considered as justly due, it seems reasonable to conclude that Colonel McClellan would have so shaped the expenditures for other works as to have enabled him to reserve a sufficiency for its payment from the funds applicable to that purpose.

In a letter to Colonel J. J. Abert, Topographical Bureau, dated August 10, 1854, Colonel McClellan, after referring to the failure of the river and harbor bill, says: "I have directed the payment and discharge of all the hands from the work. The claims of part of last month, part of which are yet unpaid, and of this month, will take up the balance of the appropriation." And he adds, that he hopes, by a sale of the property on hand, to be able to finish the dams at Chota and Cancy creek. From the above language, it would appear that the claims for a part of July and those for August, up to the date of the letter above adverted to, were all that then remained unpaid; that the balance of the appropriation remaining unexpended would be sufficient for their payment, and that the amount which could be derived from a sale of the property on hand, not being required to meet liabilities already contracted, would be used to finish the dams at Chota and Cancy creek. Now, this claim must, if just, have been known at that time to Colonel McClellan, yet he does not appear to have been aware of its existence.

Agreeably with the intention indicated in the foregoing communication, Colonel McClellan appears to have discharged and paid the hands employed on the various works of which he was in charge, in the early part of August; but the sale of the property was not made till after his death, when it was sold by Mr. R. W. W. Byrd, amounting, per his acknowledgments, to $871 25, and which appears to have been expended by him. This, with the balance of the appropriation shown to be unexpended per Colonel McClellan's accounts, would have been more than enough to pay the amount of the present claim. As shown by his letter of that date, Colonel McClellan knew as early as the 10th of August that no further appropriation could be obtained; and if this work had, as claimed, been performed in accordance with the

stipulations of the contract, why did he propose to use the sum expected to be obtained from sales of public property in finishing the dams at Chota and Cancy creek, when the dam built at Ross' island remained unpaid for? In reply to an inquiry from this office, Colonel J. J. Abert, chief of Topographical Bureau, states under date of the 14th instant: "We have no information in relation to this work, except what is derived from the contract already communicated to the Treasury Department. Nor are we able, from the letters of Lieutenant Colonel McClellan, to find why the work was discontinued, or why the account was not paid. The account in this case not being known to this office until after the death of Lieutenant Colonel McClellan."

It appears, then, that if the terms of the contract under which this claim arises were adhered to by the claimant, the order for the discontinuance of the work claimed to have been done must have been given at a time when Col. McClellan had ample means to have paid for it; and the fact that he did not do so, renders it probable that he did not regard the claim as being just; and if discontinued at a date so late that there were not sufficient funds left to pay the amount, it shows that the work had not progressed as rapidly as required by the contract, and that, in this particular at least, its stipulations had not been complied with—a strong presumption, in either case, being created against the justness of the claim—especially when taken in connexion with Col. McClellan's silence respecting it. The grounds upon which it rests at present are the contract and the certificate of Mr. Byrd. But a contract can furnish no evidence that its stipulations have been executed; and the testimony of Mr. Byrd cannot be admitted as evidence, except in the form of an affidavit, inasmuch as he is not a commissioned officer, nor, it is believed, at the time the said certificate was given, was he acting under the obligations of an oath.

In view of the foregoing considerations, and of the circumstances under which this account has been presented, it is my opinion that full and satisfactory evidence should be required showing the time when the dam, so far as claimed to have been built, was completed; that it has been carefully inspected, and that the materials used, and the manner of its construction, were in accordance with the requirements of the contract. And if it shall ultimately be decided to pay the amount, an appropriation for that purpose will be necessary, all the funds applicable thereto having been drawn from the treasury.

The communication of Messrs. Stanton and Walker is herewith returned.

Very respectfully, your obedient servant,

ROBERT J. ATKINSON,
Auditor.

Hon. JEFFERSON DAVIS,
Secretary of War.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 4.

EDMUND H. McCABE, ASSIGNEE OF ANTOINE SOULARD.

[To accompany bill H. R. 588.]

DECEMBER 12, 1856.

Mr. PORTER, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom had been referred the petition of Lewis V. Bogy and Elizabeth T. McCabe, executors of Edmund H. McCabe, beg leave to report:

That on the 20th April, 1796, Zenon Trudeau, governor of Upper Louisiana, granted to Antoine Soulard ten thousand arpents of land, at a point fifteen miles west of the Mississippi river, and seventy miles north of the port of St. Louis.

That under the act of Congress 26th May, 1824, conferring jurisdiction on the district court of Missouri, to enable claimants of land within said State to institute suit to try the validity of their claims, the said Antoine Soulard, on the 22d August, 1824, filed his petition in said district court, praying for a confirmation of the title of said land. The said petition also stated that 2,067.82 acres of said land had been, prior to the filing of said petition, sold by the government of the United States, and prayed for the latter quantity he might be allowed to locate a like quantity on other public lands of the United States. The said Antoine having subsequently died on 27th March, 1825, Julia Soulard, his widow, and James, Henry, Eliza, and Benjamin, his children and heirs at law, were made parties to this petition.

The district court having, on the hearing of the petition, decided against the validity of the said title, an appeal, as provided by law, was taken to the Supreme Court of the United States, where the case was twice argued, and at the January term, 1836, the court delivered a unanimous opinion, in which they held that the said claim to land "is a good and valid title thereto by the law of nations, the laws, usages, and customs of Spain, the treaty between France and the United States for the cession of Louisiana and the stipulations thereof, as well as the acts of Congress in relation thereto." The court then decreed that "the title to the land embraced in the concession and survey, which has not been sold by the United States, is valid by the laws and treaty aforesaid, and is hereby confirmed agreeably to said

concession and survey; and, further, that the claimants should have a right to enter the same quantity of land as may have been sold by the United States within the boundaries of said tract prior to the filing of said petition.

In pursuance of this decree a survey was made by the surveyor general, which was executed and approved 19th September, 1840. (No. 3,016.) This survey shows that the tract contained 10,000 arpents, equal to 8,506.94 acres. It also shows that the government had sold, prior to the filing of the petition aforesaid, 2,120.58 acres, for which the claimants received a certificate of relocation, as provided for in the decree of the Supreme Court.

It further appears that, between the period of filing the petition and the date of the decree of the Supreme Court in 1836, the government of the United States sold other large portions of the land lying within the boundaries of said claim.

It is for an equivalent for these lands that the petition is now presented, and in the opinion of the committee the claim is founded in justice. The point presented is a simple one. The government has sold lands within a claim derived from the former government of Louisiana, which claim has been decided by the Supreme Court to be obligatory on the good faith of this government according to treaty stipulations. The duty to make compensation is very clear, and was fully established by the Supreme Court in their decree heretofore referred to, in which they ordered certificates of relocation to issue for the land sold prior to the filing of the petition.

On these principles the committee submit a bill providing for a right to relocate on public lands a quantity equivalent to that sold within the boundaries of the said claim between the filing of the petition and the date of the patent under the decree of 1836.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 5.

HENRY T. MUDD.

[To accompany bill H. R. 589.]

DECEMBER 12, 1856.

Mr. PORTER, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of Henry T. Mudd, of Missouri, have had the same under consideration and respectfully report:

That one Charles Burke, on the 15th day of March, 1854, entered at the land office at Palmyra, Missouri, under the pre-emption act of the 4th of September, 1841, the southeast quarter of section 34, township 51, of range 2 west, containing 160 acres, for which he paid $200, (as per receiver's receipt, No. 29,293.) Upon the final decision of the case at the General Land Office, the said entry was declared illegal and set aside. The said Burke in the meantime, viz: on the 17th day of March, 1854, sold and conveyed said land to the petitioner, Henry T. Mudd, for the price of eight hundred dollars, which was paid to him by said Mudd, said Burke being an Irishman, who had taken no steps towards naturalization, and having no family, nor any visible means, except his said pre-emption, soon after his sale thereof, removed to parts unknown, and said Mudd was allowed to re-enter said land at the government price. The Commissioner of the General Land Office then decided that said Burke, or his authorized agent, was entitled to receive back his said entrance money, viz: the said sum of two hundred dollars, as his said entry had been set aside. The petitioner, Mudd, however, applied to the officers of the Palmyra land office, exhibited his said deed duly executed from Burke, and claimed that said sum of two hundred dollars should be paid to him instead of said Burke, and the case made by him was sent on to the General Land Office for its determination. The Commissioner, however, in answer, informed the petitioner Mudd that, notwithstanding the facts above stated, and the equity of his claim, which was acknowledged, the said money could not be paid to any one but said Burke or his authorized agent, in consequence of the 12th section of the said pre-emption law which declares, "all assignments or transfers of the right acquired by said pre-emption law, *prior to the issue of a patent* null and void."

The whereabouts of said Burke being unknown, as above stated, his

power of attorney cannot be procured. The Commissioner of the General Land Office, and the Secretary of the Interior, however, both concur in recommending the passage of a remedial act by Congress. authorizing them to recognize the petitioner Mudd as the assignee of Burke, so far as the right to receive the said sum of $200 is concerned, and that thereupon the same would be paid to him. The committee being satisfied that said petitioner acted in good faith in buying said land, and in ignorance of the state of Burke's title, and that the fund in question recognized as belonging to Burke in equity and good conscience belongs to the petitioner Mudd, report a bill for that purpose, and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 6.

CAPTAIN THOMAS DUNCAN.

[To accompany bill H. R. 587.]

DECEMBER 12, 1856.

Mr. PORTER, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of Thomas Duncan, have had the same under consideration, and respectfully report:

That the petitioner bought and had specially assigned to him, with the view of having them located on public lands in the State of Missouri, the following described land warrants, viz:

No. 9,745, for 80 acres, in the name of George Chewning, issued July 10, 1851.

No. 31,138, for 40 acres, in the name of Benjamin Lindsley, issued 29th of November, 1851.

No. 44,798, for 40 acres, in the name of Eleanor P. Pool, issued 6th March, 1852.

No. 53,304, for 40 acres, in the name of Turner Brown, issued 20th of April, 1852.

No. 55,108, for 40 acres, in the name of George Bromer, issued 29th of April, 1852.

And No. 53,140, for 40 acres, in favor of Labin Mauldin, issued 24th of April, 1852—for 280 acres in all.

That these warrants, thus assigned to the petitioner, Captain Thomas Duncan, were enclosed and deposited in the post office in this city to be mailed to Bela M. Hughes, of St. Joseph, Missouri, to be by him, as attorney for Captain Duncan, located in his, said Duncan's, favor. That said warrants never reached said Hughes, and have been lost. That said Duncan has applied to the pension office for duplicates of said land warrants, and has shown said facts and the loss of said land warrants to the satisfaction of the Commissioner of Pensions, so as to enable the petitioner to obtain the issue of said duplicate land warrants. But the Commissioner of the General Land Office does not recognize the assignments on said lost land warrants showing said Duncan's ownership thereof, though satisfied, as is the Commissioner of Pensions, of such ownership; nor can he do so as the general law stands, unless specially authorized; and it is morally impossible for said Duncan to find the original warrantees

so as get their assignments anew. A caveat having been duly entered in the General Land Office against the issue of patents on said lost land warrants, the government is thereby protected against any liability thereon. No mischief can result to the government by allowing the petitioner to locate the duplicates placed in his hands as he asks. But an act of justice will thereby be done him, which will relieve him from what appears to your committee to be a hardship against which he should be relieved. They therefore report a bill for that purpose, and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 7.

JEREMIAH BRYAN—HEIRS OF.

[To accompany bill H. R. 590.]

DECEMBER 12, 1856.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

In the case of the legal representatives of Jeremiah Bryan, deceased, asking to be allowed to locate six hundred and forty acres of land in the Greensburg land district, of Louisiana, referred to the Committee on Private Land Claims, the committee make the following report:

James O. Cosby, who was appointed commissioner under act of Congress for the adjustment of private land claims in that part of Louisiana east of the Mississippi and west of Pearl river, in his report of the *actual settlers*, (3d vol. American State Papers, page 70,) states that Jeremiah Bryan was of that class, having made his settlement in May, 1809. And the certificate (No. 209) of the register and receiver of the land office, issued in May, 1849, in accordance with the commissioner's report and the act of Congress, declares that claim No. 451, in the name of Jeremiah Bryan, was recognized as valid, and confirmed for 640 acres of land in the parish of St. Helena.

The parties are now asking relief, because, by the completion of recent surveys, *Bryan's* claim has been overslaughed—swallowed up by another—as appears from the certification of the present register of the Greensburg land district, under date of the 24th July last, who states, "that from the evidence on file in his office, the land originally claimed by Jeremiah Bryan in virtue of settlement and cultivation, and which claim was duly reported by the commissioner, J. O. Cosby, in his list of settlement claims, dated June 7, 1813, being No. 451 thereof, has been entirely covered by a claim represented on the map of township seven south, of range seven east, as section forty-eight, in the name of Samuel Leonard, and there is no public land where the claim of Bryan appears to have been originally located;" wherefore, your committee, recognizing the justness of the claim for relief, report the accompanying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 8.

MARY WOODBURY, ELIZABETH ODELL, AND OTHERS.

[To accompany bill H. R. 591.]

DECEMBER 12, 1856.

Mr. PRINGLE, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom were referred the petitions of Mary Woodbury, Elizabeth Odell, and of Joseph Moreau's children and ward, half-breeds of the Sioux tribe of Indians, praying for the payment of money stipulated to be paid them under the treaty of 1837, *report:*

That in 1837 the government of the United States, by treaty of that date with the Sioux Indians, stipulated to pay to the relations and friends of the chiefs and braves of said Indians, having not less than one-fourth Sioux blood, the sum of one hundred and ten thousand dollars, to be distributed by the proper authorities of the tribe, upon principles to be determined by the said chiefs and braves, and the War Department. In 1838 the War Department appointed Messrs. Pease and Ewing commissioners to carry into execution the clause of the treaty above referred to; and in September, 1838, the commissioners met the chiefs and braves, and it was determined by them that the petitioners, Mary Woodbury (then Taliaferro) and Elizabeth Odell (then Elizabeth Williams) were entitled to receive, under the treaty, the former the sum of seven hundred and fifty dollars, the latter the sum of five hundred dollars; and that J. H. Moreau, Sophia Moreau, Antoine Moreau, and Joseph Labathe, children and ward of Joseph Moreau, were entitled to likewise receive, the first the sum of seven hundred and fifty dollars, and the other three the sum of five hundred dollars each. The commissioners, however, ordered the above sums to be paid, for the first two payees, to Lawrence Taliaferro, and for the four last named payees to Samuel C. Stambaugh, as trustees; and it is not shown by the evidence, or by the record kept by the commissioners of their acts, that the chiefs and braves were consulted, or in any manner consented to the appointment of these trustees, or the payment of the money into their hands. The evidence in the case shows that but a small portion of the above sums was paid or appropriated to the use and benefit of the above named payees by said trustees. Your committee are

of the opinion that the payment of the money to the trustees, without the consent of the chiefs and braves, was not such fulfilment of the treaty as releases the government from liability to pay any such portion of the sums named as the trustees failed to pay. They therefore eport a bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 9.

BREVET MAJOR JAMES BELGER.

[To accompany bill H. R. 592.]

DECEMBER 12, 1856.

Mr. WILLIAMS, from the Committee on Military Affairs, submitted the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Brevet Major James Belger, United States army, respectfully report:

It appears from the evidence that Brevet Major Belger, whilst he was in charge of the quartermaster's department at San Antonio, Texas, through the dishonesty of his clerk, who had been employed in the service for many years, and whose previous official conduct had insured for him the greatest degree of confidence in his integrity, by means of a false entry in the monthly summary statement for the month of April, 1855, was defrauded out of $9,300, taken from the moneys of the government then in the hands of the major for disbursement for quartermaster's stores for the use of the army. It is shown by the evidence that when Brevet Major Belger signed this monthly summary statement, the amount of expenditures within the month, as appeared on its face, not being very unusual in their aggregate, did not attract the attention nor excite the suspicion of Brevet Major Belger, though the amount of expenditures was afterwards discovered to exceed that of the vouchers in the sum of $9,300, which amount was fraudulently appropriated to his own use by the said clerk, John S. Sheahan.

It is proven that up to April 1, 1855, the accounts of Brevet Major Belger were correct.

It is also shown that, owing to the occurrence of a difference between Brevet Major Belger and his clerk, on account of some delay in the latter in reaching the office after dinner, and his reception of a censure therefor from the major, he (the clerk) left the office and did not return. This induced the major to examine the books and vouchers, when the amount of funds alluded to was discovered to be missing, though, in the summary statement made out by the clerk for the month previous, it was concealed by means of the false entry alluded to. The information coming to the ears of the major that his late clerk was preparing to leave for Mexico satisfied him of his guilt. He had reached halfway between San Antonio and the Rio Grande when parties sent in pursuit of him by the major arrested him and brought him back. After his arrest he offered certain property to make good

the deficiency, provided he was let off; but Brevet Major Belger, from a sense of duty to prosecute the prisoner, refused to compound the felony. He was brought and tried before Judge T. J. Devine, judge of the fourth judicial district of the State of Texas, and was discharged on account of the want of jurisdiction in the State court, though the court was satisfied of his guilt. Brevet Major Belger then tried to bring him before a United States commissioner, but there was no such officer short of Austin, eighty miles distant. An express was immediately sent by General Smith with an affidavit to be placed before the United States commissioner at Austin, and another affidavit was being made for the purpose of holding Sheahan until the return of the express; but, notwithstanding every precaution was used to prevent his flight, he again escaped, and succeeded in evading the vigilance of those who pursued him.

A court of inquiry was instituted upon the application of Brevet Major Belger to examine all the transactions connected with the matter, which court concluded that the amount stated was abstracted by the said clerk, as was shown (say the court) by his attempt to escape, his offer after his arrest of certain property to make good the deficiency, by his acknowledgment to Colonel Roberts, and by his trial before Judge Devine.

Brevet Major Belger, after the last flight of the said clerk, commenced a civil suit against him in the district court of Bexar county, in the State of Texas, and had his property attached to satisfy the amount of the embezzlement. Judgment has been obtained against him, but the friends and relatives of the criminal are using all the delays of the law to postpone execution, and are apparently bent upon exhausting every means to that effect before the amount will be paid. The amount standing charged against Brevet Major Belger on his accounts with the government embarrasses him seriously. He appeals to the magnanimity and justice of Congress to relieve him, by authorizing that amount to be allowed him in the settlement of his accounts, for which he proposes to assign the judgment which he has obtained to the government, and the benefit of the attachment, which he alleges will fully satisfy the government when the means of the law's delay are completely exhausted.

The committee, looking at the high character of Brevet Major Belger as an officer, the efficiency and integrity which have ever marked his connexion with the government, and the fact that there is a prospect of the judgment and attachment refunding to the government the amount which he prays to be allowed to him in the settlement of his accounts, is indisposed to see so meritorious an officer suffer from the necessities of his arduous duties which required his confidential employment of this clerk; and looking also at his commendable refusal to have the deficit made good and compound the felony, report the accompanying bill for his relief.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 10.

ISRAEL B. BIGELOW.

[To accompany Joint resolution, H. R. 29.]

DECEMBER 12, 1856.

Mr. QUITMAN, from the Committee on Military Affairs, submitted the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Israel B. Bigelow, respectfully report:

That the memorialist was a contractor, in the year 1847, to furnish beef to the forces of the United States in the Mexican war, on their march from Victoria to Tampico, Mexico; that on the 14th of January in that year he left Victoria, with a part of the United States troops, for Tampico, leaving cattle and men in that place to supply with beef the brigade commanded by General Quitman, which was to follow the succeeding day. On the 19th of the same month, he was called upon by Lieutenant Elliott, an assistant commissary of subsistence, and informed by him that his men had failed to supply General Quitman's brigade with beef, on account of their having lost the cattle. The memorialist was ordered to return forthwith and, if possible, to obtain beef for said brigade, and if he could not, to notify General Quitman that he would deposit bacon at certain points on the route to supply his forces. The petitioner also received orders from General Patterson, to convey to General Quitman to the effect that he had found it impossible to obtain sufficient forage for the animals, and that those in his brigade must be put upon the same allowance of a quarter ration to which he had limited those in his division. In returning to convey to General Quitman these orders, and when about twenty miles in the rear of General Patterson, he was attacked, in both front and rear, by about twenty Mexican cavalry, and was shot through the left leg with a one and a quarter ounce ball, which passed through and fractured the head of the tibia, close to the knee-joint. Pursued by the enemy, with his limb shattered, he was forced to ride eight miles on horseback before meeting General Quitman. When he reached him he was suffering severely from his wound, but saying nothing about it he proceeded to deliver his orders. The general noticed his agonizing appearance and the blood streaming down his legs, remarked to him, "You are badly hurt." He replied, "I know I *am, and expect to die*; but I must convey to you the *orders with which I am charged.*" He then informed the

general of the orders, in detail, before dismounting. After this he suffered seven days' torture, laid out in a wagon without springs, in proceeding to Tampico, over a miserable road, at which place he was confined in bed, without once being removed, for one hundred and four days, and for the space of three years, thereafter, he was unable to walk without crutches. He still suffers with a stiff leg and knee, covered with ulcers, and has expended a large amount of money in treating it, without reference to his loss of time, intensity of suffering, &c. He now memorializes Congress for relief.

The committee discover that the duty which the memorialist was at that time discharging was that usually entrusted to a commissioned officer. It was no part of his business, as a contractor, to convey even the orders of Lieutenant Elliott, though it might appear to come within the duties which the assistant commissary of subsistence had a right to impose upon him. But the orders of General Patterson, referring to a matter with which he had no concern, but one of great importance to the forces, warning General Quitman, as it did, of a condition of things which, if he were not cognizant of, might have resulted in the horses being without any forage whatever in a few days, places his claim for relief upon tenable grounds.

The committee, looking at the importance of the service he rendered, the gallant manner in which he discharged its duties, and the unfortunate calamity resulting to him from it, recommend the passage of the accompanying joint resolution, allowing the memorialist a reasonable pension for his support.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 11.

WASHINGTON TERRITORY—FOR ARMED STEAMER.

DECEMBER 12, 1856.—Ordered to be printed.

Mr. BENSON, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred a memorial from the legislature of the Territory of Washington, praying that an armed steamer may be stationed on the northwest coast, have had the same under consideration, and report:

That the prayer of the memorial having been anticipated by the proper department of the government, and a sufficient naval force stationed on the northwest coast for the purpose desired, the committee ask to be discharged from the further consideration of said memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 12.

ISAAC PHILLIPS.

[To accompany bill H. R. 594.]

DECEMBER 12, 1856.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Isaac Phillips, of Pennsylvania, praying for an increase of his pension, report:

That they have carefully examined the proofs sent from the Pension Office to your committee, on which his claim to a pension was allowed; and it appears by the certificate of the comptroller of New York that the said Isaac Phillips, July 31, 1780, received a certificate for £6 13*s.* 4*d.*; November 30, 1780, received another certificate for £10 13*s.* 4*d.*; December 1, 1781, received another certificate for £10 9*s.* 9*d.*; January 1, 1782, received another certificate for £3 9*s.*, for his services in the revolutionary war, in the militia of the State of New York, covering in all a year's service, from the pay received, which year's service, in the aggregate, is corroborated by a credible witness, who testifies that she saw him in said service a year or more, though she was unable to give the details of said service.

It appears that the Pension Office allowed the claimant only for six months' service, and placed him on the pension roll at the rate of $20 a year. From the facts, as they appear to your committee, they think he ought to have been allowed one year's service at least, from the record evidence from the comptroller of said State. In consequence of the advanced age of said Phillips, and his loss of memory at the time of making his declaration, he was unable to give satisfactorily the details of his service, and it is not uncertain that the service proved by the woman was other service than that proved by the certificate of the comptroller of the State of New York, and that he actually served longer than he himself was able to state. He is now verging on one hundred years of age, and the small pittance he receives is wholly inadequate to his support. And as there are but few left of these venerable patriots of the Revolution on whom the government can much longer bestow its grateful acknowledgments, your committee recommend an *additional allowance, and* report a bill to that effect.

GERSHOM VAN VOAST.

[To accompany bill H. R. 595.]

DECEMBER 12, 1856.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Gershom Van Voast, submit the following report:

The claimant, in his statement under oath, makes the following declaration: "That he entered the service of the United States in the summer of the year 1779, in the company of Captain Gray, regiment of Colonel Wemple; that he was not enlisted, but continued as aforesaid for more than *three* years in the service of the war of the Revolution; that he had the care of the horses at the Congress stable, situated on the land of his father, in Schenectady; was once despatched to carry the mail or express to Schoharie, also to drive cattle to Fort Plain and Fort Herkimer; and that his brother, James J. Van Voast, for having performed the same kind of duties, is now pensioned, and that said service was not performed under any civil contract, &c., &c.

James J. Van Voast, a *revolutionary pensioner*, states, under oath, that he is brother to the present applicant, and that to his knowledge his brother Gershom entered the service at the age of 14 years, and that he belonged to the same company to which his said brother did; that said Gershom joined the company at Schenectady, under Captain Gray and Colonel Wemple in the year 1779, and was employed most of the time in taking care of the horses at the continental stable, in the city of Schenectady, and that he remained there employed, as above mentioned, more than two years; that he (said Gershom) was once despatched to carry the mail or express to Schoharie, and was once ordered to go with this deponent to drive cattle for the army to Forts Plain and Herkimer, and was attached to the army in the same capacity as he was, and was as much under the command of Captain Gray and Henry Glen, commanding general, as he was, from the years 1779 to 1783, and continued to perform all such duties as were imposed on him by the officers of the army, and did not devote any time to anything else than the military operations against the enemy of the country," &c., &c.

Jerome *Barkydt, also a revolutionary pensioner*, says, *under oath*,

that he well knew the said Gershom Van Voast was engaged in the service of the United States in the war of the Revolution for more than two years from 1779; that most of his services consisted in taking care of the horses belonging to the army; that he was compelled to do duty as express, and to drive cattle for the army to Forts Plain and Herkimer in 1780, and performed the same kind of duty that his brother, James J. Van Voast, did during the war, &c., &c.

John J. Schermerhorn, a *revolutionary pensioner*, states, *under oath*, that he has always known Gershom Van Voast, and he believes, from the best of his recollection, that Gershom V. Voast served more than two years in the army of the United States, and at the time stated in the affidavit of James J. V. Voast, hereunto annexed, &c., &c.

In presenting the case to the Pension Office, the objection to the allowance of the claim appears that, being "but 14 years of age, he could not have been under enlistment as a soldier, which is indispensably necessary to entitle him to a pension." This objection, upon an examination of the act of June 7, 1832, under which claimant is entitled, does not justify the conclusion of the Pension Office. The first section of the said act is in the following words: "That each of the surviving officers, non-commissioned officers, musicians, soldiers, and Indian spies, who shall have served in the continental line, State troops, *volunteers*, or militia, at one or more terms, a period of two years during the war of the Revolution, &c., &c., shall be entitled to receive," &c.

It is obvious from the act itself that *service only* was contemplated as the prerequisite to entitle a soldier to the pension, and not whether he was regularly enlisted, or whether it was performed without enlistment; or why would the word "volunteers" have been introduced? The act is, in its language, intended to embrace every species of service performed during the memorable struggle for independence; the term of service, provided it was of six months' duration, being the only thing necessary to insure to the aged soldier his country's bounty.

The committee deem the evidence fully satisfactory to establish two years' service, and the rules of the office themselves fully complied with; they therefore report a bill for his relief.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 14.

ELIZABETH STORRS—HEIRS OF.

[To accompany bill H. R. 596.]

DECEMBER 12, 1856.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of William L. Storrs, submit the following report:

That the petitioner, who is chief justice of the State of Connecticut, in his petition, under oath, states the following facts: That he is the son of Lemuel and Elizabeth Storrs; that his father, as he has been always informed and verily believes, was an orderly sergeant in the revolutionary war, in a company raised in 1776, and served as such for a period of six months; that afterwards, in the year 1777, he was appointed assistant commissary, and served as such to the end of the war, under Colonel Henry Champion and Jeremiah Wadsworth, and in the year 1783 (October 5) married the daughter of Colonel Henry Champion, and that his said father died in the year 1816.

Stephen Foote, a revolutionary soldier, swears that he was a neighbor of said Storrs, and knew him well during the Revolution, and knows that he was six months sergeant in 1776, and afterwards was assistant commissary under Colonel Henry Champion, and continued in that department until the close of the war, and said Storrs married a daughter of Colonel H. Champion.

John R. Watrous, a surgeon in the Revolution, and a pensioner, swears that he knew Lemuel Storrs well, and knows that he served six months as orderly sergeant in 1776, under John Isham, captain of the Connecticut militia; that in the year 1777 the said Storrs continued, according to the best of his recollection, in the business of an assistant commissary until the close of the war, and afterwards married a daughter of Colonel Henry Champion, under whom he acted, and was an active and efficient officer.

It appears from an original letter, marked A, and filed in the case, addressed to "Colonel Henry Champion, D. C. G. P.," by the said Lemuel Storrs, and dated December 9, 1779, that Storrs was then engaged as assistant commissary.

The records of Connecticut, imperfect as they are, furnish evidence of the service of Storrs, from June 28, 1780, to December 7, 1781. (See paper marked B.)

Thus it is satisfactorily shown to the committee, not only by affidavits of persons having knowledge of the facts to which they testify, but also by documents and authenticated extracts from the records of Connecticut, which show conclusively that Lemuel Storrs served several years as assistant commissary in the Revolution.

It satisfactorily appears to the committee, by the affidavit of the minister having charge of the church records, and of those who knew them at the time of marriage, that said Lemuel Storrs and Elizabeth Champion were married on the 5th day of October, 1783. (See papers marked C and E.)

From the brief marked D, furnished from the Pension Office, it appears that the only question raised by the department was, whether the service of Storrs was of a *civil* or *military* character. Your committee conceive that that question improperly arises in this case, inasmuch as by the resolution of the Continental Congress of the 22d of August, 1780, all persons or officers to whom public property was intrusted were made subject to martial law; from which it would appear that Storrs held his office not in a civil but in a military character; and, indeed, in this very brief the military character of his service is conceded.

The committee, being satisfied that the evidence sufficiently proves several years' service of said Storrs as assistant commissary during the Revolution, report a bill for the pension due for said service.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 15.

ELIZABETH MARTIN.

[To accompany bill H. R. 597.]

DECEMBER 12, 1856.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Elizabeth Martin, widow of George, report:

That the said Elizabeth made claim in 1844, to the Pension Office, for a pension under the act of Congress of July 7, 1838, founded on the services of her husband, George Martin, as an express rider from Charlottesville barracks, Virginia, to different parts of the State to the army, in the revolutionary war, for twelve months or more preceding the surrender of Lord Cornwallis. It is also claimed that he sometimes acted as deputy quartermaster at that post, to press horses and cattle, and obtain provisions for the prisoners at the barracks. The claim was disallowed on the grounds that "there was no authority to enlist under military obligations an express rider, and the pension laws provide for those only who rendered service in an authorized and embodied corps under the penalties of the law-martial."

One witness testified that she knew he served as an express rider, and found his own horse for one year in the war in the service above stated, and "also acted as a kind of deputy quartermaster to press horses into service, and bought up cattle and other provisions for the troops at the barracks and the prisoners taken at Burgoyne's defeat."

Another witness, certified to be credible, testified that he was well acquainted with the said George Martin, and he knew he served as an express rider, and found his own horse, for more than six months, if not twelve, when the British prisoners were quartered at Charlottesville, called Albemarle barracks.

It appears she was married to said Martin before the close of the war in 1782, and is now ninety years old, and needy.

Your committee think that the services rendered by an express rider is meritorious service; and while acting in that capacity, had he been derelict in the performance of his duty, would, whether taken from the line, or engaged in voluntary service, be subject to the same penalties of the law-martial. And inasmuch as the former pension laws have not provided for this service, they recommend a bill for her relief.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 16.

AMOS ONEY—HEIRS OF.

[To accompany bill H. R. 598.]

DECEMBER 12, 1856.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the heirs of Amos Oney, a revolutionary soldier, report:

That having examined the proof of the claimants, as returned in the papers from the Commissioner of Pensions, it satisfactorily appears to your committee that the said Amos Oney enlisted at Charlestown, Rhode Island, on the 16th day of June, 1775, and served in Colonel G. Hoxie's regiment, in Captain Roswell Smith's company, of Rhode Island troops, for six months; also in the same company for other six months in 1776; and other six months in 1777, in Captain Briar Lewis' company, in Colonel Noyes' regiment, of Rhode Island State troops.

The claim made to the Pension Office was for two years' service, and on very unsatisfactory evidence. But after it was suspended, additional evidence was furnished, which, to the minds of your committee, is satisfactory to them, and ought to have entitled the applicant to a pension for the amount of services proved. But since then the applicant has died, leaving no widow, but one or two children, who are justly entitled, in the opinion of your committee, to the pension their father would have received had he lived to obtain it. They report a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 19.

WIDOW OF HENRY WALTHALL.

DECEMBER 12, 1856.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Elizabeth Walthall, report:

That it satisfactorily appears to your committee that the petitioner is the worthy widow of a revolutionary soldier, is now old, infirm, and dependent upon her own feeble exertions for support, and the small stipend or gratuity of $24 per annum which she receives from the United States, as the widow of Henry Walthall, for his services in the war of the revolution, is entirely inadequate for her present support. It further appears that she is too poor and destitute of means to procure the proofs to establish her right to the bounty land conferred upon the widows of revolutionary soldiers under the land bounty laws, to which she is clearly entitled, as shown by the amount of the annuity she receives. She prays that her pension be so increased as to render her declining years free from the want of common necessaries of life, and that she be made a participant of the provisions of the land bounty act in force, without the usual formalities, she being so circumstanced as to be unable to procure the requisite proofs of her husband's services.

Your committee being impressed with the truthfulness of her story, the reasonableness of her request, and the equitable claim a necessitous widow of a soldier of the revolution has upon her country *in extremis*, they report a bill accordingly.

denied on the ground that she died without issue, and it was not available in the hands of an administrator.

It is claimed by the petitioners that the pension due to her was a *vested right*, and she having had issue, the vested right at her death passed to her grandchildren, her legal representatives, as assets in the hands of administrators for their use, and they refer to 60 Litt., 293, and 2d Black. Com., 511, in support of their claim, and to Toller's Law of Executors, page 136, which makes it the first duty of administrators to pay the expenses of the funeral charges, &c.

Your committee do not think it necessary for them to pass on the validity of this claim. They think the case itself presents strong equities for allowance without regard to legal points. It was an act of Providence which prevented her from obtaining it, and as she would have transmitted it to her needy descendants had she been capable of taking it, it would be no more than justice should it take that direction now.

It further appears that she and her husband, Lieutenant Martin, sacrificed their all for the common cause; and but for their devotion to it, her descendants might have been in the enjoyment of a comfortable competency. But being influenced by the addresses and proclamations of Congress to the Canadians, under promises of protection and remuneration, Lieutenant Martin and his two sons, Francis and Joseph, joined the American army, for which act, on the retreat of the Americans from Canada, the British government confiscated his farm, destroyed his property, and exiled them from their home. The two sons served out the war, and received honorable discharge, and Lieutenant Martin died in the government hospital from disease contracted while on a perilous journey into Canada, by order of Major General Schuyler, in these words: "You may believe your family will be under my care in your absence, and if any ill luck shall happen to you in this dangerous journey that you are doing for the common cause, a like compensation will be allowed your wife as yourself; with this assurance be encouraged. * * * Farewell, Mr. Martin; good journey."

In view of the losses the family sustained in property and life, her devotion and example before her sons in the cause, and that those losses have never been compensated for, your committee have agreed to recommend the passage of a bill for the relief of the grandchildren, and they report a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 18.

JUDAH AND SARAH B. MANDIGO—HEIR OF.

[To accompany bill H. R. 600.]

DECEMBER 12, 1856.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Daniel Mandigo, surviving child of Judah Mandigo and Sarah Mandigo, report:

That on the 19th day of October, 1835, Judah Mandigo made declaration before the probate court in and for the district of Grand Isle and State of Vermont, for a pension under the act of Congress passed July 7, 1832, and on his oath declared that he enlisted in the army of the United States the last of April, 1782, and served in the continental line under Captain Dana and Lieutenant Thomas Pearce; that he enlisted at Fishkill, in the county of Dutchess, in the State of New York; that he was employed assisting at a bake-house belonging to the United States, two miles east of Fishkill landing, and in driving cattle and drawing wood chopped by the troops, but the greatest part of the time he acted as waiter to the captain and lieutenant of his company; that he served in the capacity aforesaid eighteen months, and was discharged in the fall of 1783. He thinks Colonel Chaudonett and Major Botts were his regimental officers, or acted as such. On this declaration, and without any accompanying proof of his services, the Pension Department disallowed his claim, assigning as the reason at the time for rejecting his claim that he was "under age, a waiter." It does not appear that he ever renewed his application, but that he died, without obtaining a pension, on the 28th of April, 1847.

It further appears that on the 27th day of April, 1853, Sarah B. Mandigo, the widow of the said Judah Mandigo, made her declaration before a master in chancery of the 13th judicial circuit of Vermont, under the act of Congress of July 29, 1848, for a pension, on account of the alleged services of her husband in the revolutionary war, as claimed by him in his declaration in 1835. It appears by the proofs that she was married to him at Watertown, in the State of Connecticut, on the 14th day of January, 1797, by the Reverend Mr. Gridley, who was then residing there; that there was no public record of the marriage; that the entry in the family bible established the

marriage at the date aforesaid, and there was further evidence of cohabitation from the time of the marriage till his death. Accompanying this declaration is the testimony of Jonathan Mandigo, the brother, certified to be a credible person, before the officer taking the same, that during the revolutionary war he resided at Fishkill, in his father's family; that in the spring of 1782 his brother Judah enlisted and entered the service at Fishkill, as a common soldier, and saw him doing duty in his company, and saw him driving team and moving military stores from Fishkill town to the landing, and from thence boating them down the river to West Point; that he came home on furlough a few days, and he was present when the company disbanded, and he was discharged; that this took place after the war ended; he believes his brother served over eighteen months. Another witness, the brother of the said Judah, and who is duly certified to be a person of credibility, testified that he was personally knowing to his brother performing eighteen months' service in the manner related by the other witness.

There is evidence of the service of the ancestor for eighteen months, according to the ordinary rules of evidence, which ought to have entitled him to a pension, had he furnished the proof to the Pension Office when he made his application. As the proof now stands, he would have been entitled to three-fourths of a pension, from March 4, 1831, to April 28, 1847, when he died; and his widow to three-fourths of a pension, from April 28, 1847, to January 22, 1854, when she died. Your committee consider that the nature of the services performed entitled them to the benefits of the act of Congress of June 7, 1832, and they report a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 19.

WIDOW OF HENRY WALTHALL.

DECEMBER 12, 1856.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Elizabeth Walthall, report:

That it satisfactorily appears to your committee that the petitioner is the worthy widow of a revolutionary soldier, is now old, infirm, and dependent upon her own feeble exertions for support, and the small stipend or gratuity of $24 per annum which she receives from the United States, as the widow of Henry Walthall, for his services in the war of the revolution, is entirely inadequate for her present support. It further appears that she is too poor and destitute of means to procure the proofs to establish her right to the bounty land conferred upon the widows of revolutionary soldiers under the land bounty laws, to which she is clearly entitled, as shown by the amount of the annuity she receives. She prays that her pension be so increased as to render her declining years free from the want of common necessaries of life, and that she be made a participant of the provisions of the land bounty act in force, without the usual formalities, she being so circumstanced as to be unable to procure the requisite proofs of her husband's services.

Your committee being impressed with the truthfulness of her story, the reasonableness of her request, and the equitable claim a necessitous widow of a soldier of the revolution has upon her country *in extremis*, they report a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 20.

LIEUTENANT DANIEL STARR—HEIRS OF.

[To accompany bill H. R. No. 602.]

DECEMBER 12, 1856.

Mr. WOODRUFF, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the children and heirs of Lieutenant Daniel Starr, report:

The merits of this claim are fully shown by the petition and the two affidavits hereto annexed, and made a part of this report. As the evidence shows this case to be like that of Joshua Fanning, (for the benefit of whose heirs an act was passed July 7, 1838,) the report in the Fanning case is added hereto, as containing a brief and clear exposition of the principle which has governed the committee in deciding to recommend an allowance to the children and heirs of a naval officer who gallantly laid down his life in the service of his country. In addition to the seven years' half-pay usually allowed in such cases, an allowance of such sum as remains due and unpaid for his services is recommended by the committee.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No 21.

HEIRS OF LEVI AND MARY STONE.

[To accompany bill H. R. 603.]

DECEMBER 12, 1856.

Mr. WOODRUFF, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Levi Stone, beg leave to report:

That the petitioner, in his application for pension, states, under oath, that he served seven or eight months as private in the revolutionary war, commencing in March, 1775. After this term of service expired, he was promised by John Wood, *assistant deputy quartermaster general*, a commission as captain, provided he would raise a company of artificers. That he accordingly did raise a company of about forty, and was regularly commissioned its captain. Said company was stationed at Danbury, Connecticut, and he served as captain of the same for *two years and eight months;* that all orders which were addressed to him, were addressed as *captain;* and that he received the pay and wages for that grade of service, and at the termination of his service he was regularly discharged. In support of the truth of his statement, the judge of the court, before whom his statement is made, certifies to his credibility from his personal knowledge.

In addition to this, the affidavits of several persons are presented, all of whom *served under* him, and are pensioned for this very service as artificers.

Daniel Stone swears that he well knew Levi Stone, and knows that he was captain of the corps of artificers stationed at Danbury, Connecticut; that Captain Stone entered the service in March, 1777, and served as such for a period of *two years and eight months;* that he served as private of artificers a greater part of the time under Captain Stone, &c.

Uriah De Forrest, a revolutionary pensioner, swears that in 1777 (April or May) he enlisted in the service of the United States, and served as an artificer at Danbury, Connecticut, in the company commanded by Captain Levi Stone; that he is well acquainted with said Captain Stone, and that he never heard it doubted that he served as a regularly commissioned captain.

Samuel Wildman, a revolutionary pensioner, swears that he knew Levi Stone as *captain of artificers;* Stone lived in his father's family

eighteen months; knows he was appointed captain in March, 1777, and served in that capacity at Danbury, Connecticut, from two to three years; he had thirty or forty men under him, and that said company was on the continental establishment.

Eli Wildman swears that he knew Captain Levi Stone in the revolutionary war; that in the spring of 1777 he was commissioned captain of artificers, had a number of men under his command, and served, he should think, more than *two years as captain* on the continental establishment.

Joel W. Church, a pensioner under act of 1818, swears that he knew Captain Levi Stone during the war of the revolution; said Stone was an apprentice to his (deponent's) father. That he served six months in the years 1777 and 1778, respectively, as an artificer under said Stone, and his residence, during the war, was in sight of the artificer's shop; and he knows that said Stone was captain of the artificer corps from March, 1777, to August, 1779. That he had thirty or forty artificers under his command; that the corps was under the quartermaster's department; that said company was raised by said Captain Stone, under the directions of Major Wood, quartermaster general. That he worked on the anchor chains for the main (chevaux-de-frise) which was strung across the Hudson river at West Point. We were all privates under Captain Stone, and in August, 1779, I left Danbury, and went into Colonel Baldwin's regiment. Accompanying these are various extracts from documents in the Connecticut Historical Society, from John Wood, assistant quartermaster general, at Danbury, Connecticut, and Colonel Hugh Hughes, running from March, 1777, to May, 1778, in which reference is made to the materials used at Danbury by this artificer corps.

The claimant has been granted a pension by the department of $23 per annum, and also to his widow of the same amount, since the decease of said Captain Stone. The evidence of marriage being a certificate from the records of the town clerk where it was performed.

The committee, after a careful examination of the case, cannot withhold its surprise that to one so well fortified by proof of the most reliable character, viz: that of the personal knowledge of those who served in the same corps of artificers under Captain Stone, there could be a doubt as to the correctness of the allegation of the claimant, which is also corroborated by the known history of the times; and it is the more remarkable that the *soldiers who served under Captain Levi Stone should be pensioned for the very term of service which their captain is denied.* It is a well authenticated fact, that the records of the revolutionary service in many instances have been *entirely destroyed*, and at best these records were very meagre. Hence, it would be a denial of the bounty tendered the officer or soldier if his claim rested entirely upon record proof. The committee therefore report a bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 22.

THOMAS GILES—HEIRS OF.

[To accompany bill H. R. 604.]

DECEMBER 12, 1856.

Mr. KNAPP, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the children of Thomas Giles, a revolutionary soldier, report:

That, from the statements of the petitioners, as well as from original documentary evidence and historical facts accompanying the same, it is clearly shown, to the satisfaction of your committee, that the said Thomas Giles enlisted for three years in the 13th Massachusetts regiment of continental service, and at the end of said term received an honorable discharge, with a certificate of good soldiership, from the commandant of said regiment; that he again entered the service of the United States in the navy, as sailmaker, and served to the close of the war; that he died the 18th of November, 1795, leaving a widow, to whom he was married June 22, 1780, and before the last period of his service; that she died the 22d of September, 1822, and that neither ever received a pension—for the reason that they died before the enactment of any such laws—nor have they received bounty lands from the United States, for the reason of the clause in the land bounty bill, "*minor*" children, though they are now old and helpless as children in their minority. The continental Congress gave to the *during war man*, and to the heirs and representatives of those slain by the enemy, 100 acres of bounty land; the act of Congress of March 3, 1855, gives to the soldier who served *fourteen days* 160 acres. The children of the *during war man* of the revolution, and those slain by the enemy, under the resolution of Congress of September 16, 1776, are now entitled, though not *minors*, to the undrawn warrant of their ancestors; and your committee are unable to discover the policy or wisdom of the legislators in the framing of the eighth section of the act of March 3, 1855, unless it was to exclude the children of the revolutionary soldier from the benefits of said act, which they are not willing to believe was their intention. And your committee, being unable to perceive any good reason why the children of the revolutionary soldier, though not minors, should *not receive the bounty land* to which their ancestor

would be entitled, if living, under the last mentioned act, and in view of the impoverished condition of said claimants, rendered so, as alleged by them, and which your committee have no reason to doubt, from the depreciation of their pay and continental money, one hundred dollars of which they paid for a barrel of flour, and seventy-five dollars for a cart load of wood, they have resolved to recommend a bill for the relief of said petitioners, for the reasons above stated; and a further bill for the land due to their grandfather, Thomas Giles, who was "a combatant at Bunker hill, and died the next day after the battle," which your committee believe comes within the spirit and meaning of the resolution of Congress of September 16, 1776, granting 100 acres of land to such officers and soldiers as shall be slain by the enemy, their heirs and representatives.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 23.

LEONARD LILLY.

[To accompany bill H. R. 605.]

DECEMBER 12, 1856.

Mr. A. OLIVER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Leonard Lilly, having had the same under consideration, beg leave to submit the following report:

It appears that in 1837 the petitioner presented an application to the Commissioner of Pensions for an invalid pension, on account of wounds received in the battle of Queenstown. The evidence as to his having been severely wounded, while in the discharge of his duty in the service of the United States, is of the most conclusive character, consisting of the affidavits of Martin Phelps, major general, and other officers of his regiment and company. With the papers filed in 1837 is the sworn certificate of P. H. Burdick and G. W. Moxon, two respectable physicians, stating that they had examined the petitioner on the 8th July, 1837, and found that, by reason of a wound, occasioned by a ball or buck shot in his left side, he was at that time one half disabled from obtaining his subsistence by manual labor.

Lieutenant Jacob Cady, in an affidavit dated on the 5th January, 1838, testifies that he was a lieutenant, duly commissioned, in Colonel Stranahan's regiment of militia, and that, on the 13th day of October, 1812, a part of the company to which he belonged crossed over into Canada, at Queenstown, and were engaged in the Queenstown battle; that Leonard Lilly was among the number who crossed the river, and that said Lilly was wounded in the said battle; that, upon the return of the troops to the United States, the said Lilly was conveyed to the hospital, where he remained until about the last of November, under the care of the surgeon; that, from the time of the battle at Queenstown, to the knowledge of Cady, the said Lilly was constantly in the hospital, until about the last of November, as aforesaid. Lieutenant Cady further testifies that the command of the said company devolved upon him; and that, while in command, he gave the petitioner his discharge from the service, he having faithfully served out his term.

Your committee are of opinion that the fact of the petitioner having been wounded while in the service and in the line of his duty; to

have been honorably discharged from the service, and to have been entitled to a pension for a half disability, was conclusively proven on the 5th day of January, 1838.

It appears, upon referring to the rolls of the company in which the petitioner served, that it is noted thereon that he deserted November 5, 1812.

This remark upon the roll is fully shown to have been an error, occasioned by his absence in the hospital.

The claim for a pension appears to have been disallowed by the Commissioner of Pensions, for the reason that the roll stated the claimant to have deserted, as above. The commissioner had no authority to amend the roll, or disregard the remark upon it, although Lieutenant Cady had testified to, and explained the reason why Lilly had been returned as a deserter by an officer who had succeeded him in the command of the company.

Afterwards, in 1851, on an application again for a pension, he was allowed a pension, at the full rate of disability, from the 8th September of that year, notwithstanding his name continued to stand on the company roll with the remark, "a deserter."

On an application in June last for the benefit of the bounty land act, his claim was disallowed by the present Commissioner, on the ground that he stood on the rolls as a deserter, and that parol testimony could not be received to contradict the record. On an appeal to the Secretary of War, and upon an examination of the whole case, the Secretary thought the case so clear that he decided that the remark on the roll was an error, and ordered that the roll be amended, and that Lilly be considered to have been "honorably discharged."

Your committee, as before stated, are of the opinion that all the necessary facts were fully proven in 1838; the evidence subsequently furnished being merely cumulative, and only material as confirming what had been so clearly stated by Lieutenant Cady, from his own personal knowledge and information; and, considering the peculiar hardship of the case, and the injustice done to a gallant and suffering soldier, through mistake in the transfer of officers and men from one command to another; and desiring that justice, even at this late day be done, by granting the prayer of the petitioner, beg to introduce the accompanying bill for his relief.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 24.

OWNERS OF THE FISHING SCHOONER UNCLE AMASA.

[To accompany bill H. R. 628.]

DECEMBER 19, 1856.

Mr. COMINS, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred the petition of the owners of the fishing schooner Uncle Amasa, lost at sea, praying for an allowance of bounty, beg leave to report:

It appears, from the petition of the owners, (the names of all of whom are attached,) that the "Uncle Amasa" was built at East Boston, in the State of Massachusetts, in the year 1848, and was of the burden of 70$\frac{23}{95}$ tons; that said schooner, in the spring of 1852, was duly licensed and fitted for a codfishing voyage on the banks of Newfoundland, on which voyage she sailed in the month of April of said year; that she was last seen on said banks, in the month of June succeeding, engaged in the codfishery and doing well; that, as she has never returned nor been heard from since that time, it is supposed she subsequently foundered at sea, portions of her hull having been discovered in the vicinity of "Quireau," the bank where she had been engaged in fishing; that said schooner was manned with an experienced captain and crew, all of whom, it is supposed, perished, leaving destitute widows and orphan children; and upon this state of facts Congress is asked to pass an act granting to the petitioners the amount of bounty which the said schooner would have earned had she completed her fishing voyage and returned safely to port, to be divided among the owners and bereaved relatives of the deceased crew in accordance with the provisions of the bounty acts.

To the petition of the owners are appended the names of the widows and orphan children of the deceased, together with a certificate of the collector of the Barnstable district that the said schooner was duly licensed for the codfishery on the 10th of March, 1852; that the owners are honorable and responsible men; and that, so far as is known to the revenue officers of the district, at the time of the loss of the said vessel, she was honestly engaged in the codfishing business. An affidavit is also enclosed from Cyrus Weeks, to the effect that he had sailed in the said schooner, and that about the 20th of October, while at the harbor of Cape Canso, Nova Scotia, he saw, on board of a schooner belonging to Cape Canso, a binnacle, which he recognized at once as having belonged to the Uncle Amasa; that the captain

informed him it was picked up about six miles from the land, off the harbor called County harbor, Nova Scotia; that it contained two compasses, and had the whole of the name Uncle Amasa painted on the forward part, and the initials on the two sides; and that there is no doubt, therefore, of the identity of the binnacle.

Under the general law no allowance could be made; the necessity for a special act arising from this fact, that the vessel had not, so far as is known, completed the "fishing term" of four months, by which she would have been entitled to the allotted bounty. Whether that "fishing term" were completed, and the schooner lost on her "returning to any port in the United States," is, therefore, a matter entirely of conjecture; but, under the peculiar circumstances of the case, and in accordance with what the committee believe to be the spirit and policy of the acts of Congress relating to the codfisheries, to which protection has been wisely extended by the government from its earliest periods, and in accordance, moreover, with the previous action of Congress in similar cases, a bill is herewith reported for the relief of the petitioners, in behalf of which the sanction of the House is invoked.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 25.

RELIEF OF INHABITANTS OF ASCENSION PARISH, LOUISIANA.

[To accompany bill H. R. 538.]

DECEMBER 19, 1856.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the bill for the relief of the inhabitants of the parish of Ascension, in Louisiana, made the following report:

Under the law of Congress passed in 1805, creating a board of commissioners to examine and report upon the private land claims in the Territory of Orleans, the commissioners (in their report presented to Congress in 1812, and published in the 2d volume of American State Papers, page 297, number 391,) state: "that Isidore Blanchard claims for the parish of Ascension a tract of land situated on the west side of the river Mississippi, containing four arpents one toise and four feet front, and 40 arpents in depth, and bounded on the upper side by lands of Wm. Conway, and on the lower by land of Jean Vessier. There is no written evidence of title to the land claimed; the church is built upon it, and it has been used as a glebe for a great number of years, and is claimed by the people of the parish as belonging to them for the use of the church. The board are of opinion it ought to be confirmed."

This board was authorized to make final adjudication of title as against the United States; failing to do that in any given case, they were required to make report for presentation to Congress, with an opinion thereon, as to the justness of the claim.

On the 3d March, 1811, Congress passed an act for the sale of public lands, with a *proviso* in the 6th section, "that till after the final decision of Congress thereon, no tract of land shall be offered for sale, the claim to which has been in due time, and according to law, presented to the register of the land office, and filed in his office for the purpose of being investigated by the commissioners appointed for the purpose of ascertaining the rights of persons claiming lands in the Territory of Orleans." Under this proviso, the lot claimed by Isidore Blanchard as stated, and reported to Congress for confirmation, cannot be sold by the officers of the government until Congress shall

have acted thereon. And although the act of 12th April, 1814, confirming claims reported on favorably, has been construed as a confirmation of the one now in question, yet, as no certificate of its confirmation was issued by the register of the land office *prior* to the passage of the act of 26th May, 1844; and as he may not *now* have the right so to do, inasmuch as that act of 1844 declares that the lands embraced within its provisions, if not claimed by petition before the court created by it, within two years from the passage of the law, should be forfeited; and as the land can neither be surveyed and patented to claimants without such certificate from the register, nor sold by the government until action is had on the original application; and as it was the undoubted intention of Congress that all the claims thus reported upon favorably by said board should be confirmed; and as the lands in question have been used and recognized as glebe lands for more than 60 years, your committee are of opinion the same should be confirmed in accordance with the original report of the land commissioners and the plan of surveys in the approved maps on file in the office of the surveyor general of Louisiana.

4TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 26.

DANIEL DENVER.

[To accompany bill H. R. 629.]

DECEMBER 19, 1856.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Daniel Denver, respectfully report:

The memorialist was a private in the marine corps, and whilst engaged in the service of his country on the frigate Constellation, in Hampton Roads, was struck with blindness, since which time he has been completely blind. The efficiency of the memorialist as a soldier is attested by the certificate of his officers, and the fact of his having become blind in the service of his country is proven by the certificate of the surgeon. For this loss of sight he is receiving from the government the small pittance of three dollars per month, which suggests at once the propriety of Congress granting the small increase of pension which is the object of the memorialist's prayer, more especially as his condition is one of absolute poverty. The expenditure involved in the increase would be but small, as the memorialist is aged and infirm, and cannot long survive this life.

The committee report the accompanying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 27.

BENJAMIN W. SMITHSON.

[To accompany bill H. R. 630.]

DECEMBER 19, 1856.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Benjamin W. Smithson, respectfully report:

The evidence in the case shows that Benjamin W. Smithson was captain of company K, in the third regiment of Missouri mounted volunteers; that he entered the service of the United States in 1847 to serve during the Mexican war; that he was marched to New Mexico with his regiment and stationed at Taos; that on the 31st of October Captain Smithson tendered his resignation to Colonel Newby, of the Illinois volunteers, then in command of that military department; that, after this, Captain Smithson continued in command of his company, by order of Colonel Newby, until his resignation was accepted by the Secretary of War, it having been sent by Colonel Newby to the Adjutant General, who submitted the same to the Secretary of War, with a recommendation that Captain Smithson be discharged, to take effect from the 1st of November, the day after the date of the resignation. This recommendation was approved by the Secretary of War, and communicated, by the Adjutant General, to Colonel Newby in a letter dated January 4, 1848. Captain Smithson remained in his command at Taos until the order of the Adjutant General was communicated to him by Colonel Newby, which was about the 1st of April, 1848. The committee are of the opinion that an order from the Secretary of War could not take effect in New Mexico two months before the date of the same at Washington, and four months before the reception of the same in New Mexico. Such a thing is impossible, and should not weigh, in the opinion of the committee, against the payment of Captain Smithson for the time he remained in the army, between the date of his resignation and the reception of its acceptance. The committee accordingly report a bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 28.

ELI DARLING.

[To accompany bill H. R. 631.]

DECEMBER 19, 1856.

Mr. DICKSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Eli Darling, an employé at the navy yard, Brooklyn, New York, having had the same under consideration, beg leave to report:

That from the evidence presented to the committee, it appears that Eli Darling was employed at the navy yard, Brooklyn, New York, as a dock builder at the time of receiving the injury; that he had been so employed for many years; that he was a sober, industrious, and worthy man; it also appears, that while so employed in driving piles, a splinter was thrown from the pile by the force of the battering hammer, striking Mr. Darling in the face, most dreadfully lacerating the flesh, destroying both eyes, and disfiguring his person. This calamity occurred on the seventh day of October, 1834. Since which time he has been not only totally blind, but otherwise disabled from injuries to other parts of his body, received at the same time, and from the same cause by which he lost his eyes; and while the committee would not advise any change in the general policy of the government in providing a limited and scanty support to those who are injured or disabled in its service, as regularly commissioned officers or enlisted seaman or marine, they conceive there is no danger in so far departing from the rules, in certain meritorious cases, as to preclude from the care of the government all persons in its service who do not happen to be entered upon its rolls for a series of years, according to law, rules, and regulations of the navy. Cases may occur where a volunteer or a laborer may be as richly entitled to the bounty of the government for injuries received in its service, as any individual covered by the mantle of the law; and such a case is presented by the petitioner, Eli Darling, who was a sober, industrious, and worthy mechanic, employed by the government for a series of years prior to the calamity which befel him—a calamity of such a nature and magnitude as to excite the commiseration and sympathy of every feeling heart. All cases of a like character must be brought to the consideration of Congress, and

tried and passed upon their intrinsic merits. The committee entertain the opinion that no injurious precedents would be offered, nor any pretexts furnished for abuse in after time; and taking into consideration the fact, that in the case of James Jones, an employé as rigger, not enrolled or enlisted as one of those meritorious cases where the government may and ought to interpose to save from intense suffering by poverty one who was made helpless while in the service of his country, by an unforeseen accident, that the same parental care may be extended to Mr. Darling; and therefore respectfully offer a bill for his relief, and ask its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 29.

JOHN L. WIRT.

DECEMBER 19, 1856.—Ordered to be printed.

Mr. THURSTON, from the Committee on Accounts, made the following

REPORT.

The Committee on Accounts, to whom were referred the petition and papers of John L. Wirt, who was wounded by the discharge of a pistol while performing his official duty as a police officer of the Capitol, having carefully read the petition and testimony in the case, beg leave to submit the following report:

Your committee find the petitioner to have been wounded, as alleged, on the 23d day of April, 1844, as appears by the Journal of the House of Representatives of that date, and as is minutely described by John Fred. May, M. D., in his certificate of the 25th May, 1844, accompanying the papers in this case, and which is marked No. 1, and his affidavits of June 30, 1846, marked No. 2, and January 15, 1852, marked No. 3, together with his certificate of the 3d of March, 1856, which are entitled to full credit, and which proves, beyond a doubt, that a permanent disability has grown out of the wound received as aforesaid, which is wasting away the life of the petitioner, as is clearly proved by numerous certificates and affidavits of the highest character, and which make a part of this report, and are numbered from one to twelve, inclusive. It appears that the House of Representatives, on the 15th of May, 1844, (twenty-two days after the wound was inflicted,) by resolution, gave the petitioner a bounty of one hundred and fifty dollars, "in consideration of expense incurred by being wounded in the Capitol, while in the discharge of his duties;" but the extent of the injury had not then developed itself, or the bounty of the House would, doubtless, have been of corresponding magnitude. Notwithstanding, the records of the Senate and House of Representatives, and the laws, furnish abundant precident. (See Statutes at Large, volume 6, pages 12, 57, 103, 193, 245, 373, 770, and 892, and numerous other instances.) As it is the duty of your committee to audit the accounts and control the contingent fund of the House of Representatives only, they cannot refrain from saying that they think the case calls for the attention of Congress, and that the petitioner is worthy of relief.

No. 1.

John F. May's certificate.

WASHINGTON, *May* 25, 1844.

The injury received by Mr. John L. Wirt on the 23d of April, while in the discharge of his *duty at the Capitol, I* consider of a very serious

nature, and such as will render him unfit for any actual employment for a considerable period of time.

The wound was made by a ball discharged from a rifle-barrelled pistol, which, entering the anterior part of the thigh about two inches from the groin, passed obliquely upwards and backwards, fracturing the femur or thigh-bone on its anterior and outer surface near the hip. How far the bone is injured it is impossible to decide with *accuracy*, but from an examination made with the finger through the wound, which is about three inches in depth, the bone was found to be broken and extensively denuded, and a fragment of considerable size loose. One piece of bone had already been removed before this examination, and more will, I think, have to exfoliate or be detached before the parts will heal. This will necessarily be attended with pain, a profuse discharge of matter, and an inability to use the limb. I therefore consider him totally unable to perform any active duty while this process is going on.

JNO. FRED. MAY, M. D.

JUNE 27, 1844.

I consider Mr. Wirt still unable to attend to his duty at the Capitol. To recommence his duty at this time would be attended with decided injury to his limb, which might be of a very serious character. If it is desired, I will certify when I consider him able to attend to his duty.

J. F. MAY.

No. 2.

Affidavit of John F. May, Surgeon.

It is hereby certified that John L. Wirt, a police officer of the Capitol of the United States, was disabled and rendered incapable of performing the duty of travelling to the top of the said building by reason of a wound he received whilst actually in the discharge of his duty. By satisfactory evidence, and accurate examination, it appears that on the 23d day of April, 1844, whilst endeavoring to preserve the peace, at or near the west door of the House of Representatives, in the District of Columbia, he received a wound from the discharge of a pistol in the hands of William S. Moore, the ball entering the anterior part of the thigh, about two inches from the groin, passing obliquely upwards and backwards, fracturing the femur or thigh-bone on its anterior and outer surface, near the hip. How far the bone is injured, it is impossible to decide with *accuracy*; but from an examination made with the finger through the wound, which is about three inches in depth, the bone was found to be broken and extensively denuded, and a fragment of considerable size loose; one piece of bone had already been removed before this examination, and more will, I think, have to exfoliate or be detached before the parts will heal. This will necessarily be attended with pain, a profuse discharge of matter, and an

inability to use the limb in performing any active duty while this process is going on. A free use of the limb will be attended with serious consequences to him; he is thereby not only incapacitated for military duty, but, in the opinion of the undersigned, totally disabled from obtaining his subsistence from manual labor.

JNO. F. MAY, M. D.,
Surgeon.

Subscribed and sworn to before me, this 30th June, 1846.

SAMUEL D. KING,
Justice of the Peace, Washington county, D. C.

No. 3.

Certificate of Dr. May.

This is to certify that I attended Mr. John L. Wirt for a gunshot wound received in the discharge of his duty at the Capitol. I have already given him a statement of the nature, and effects upon his system, of the injury which he has received; and from an examination which I have again made of his wound this day, I find it to be much in the same condition as described in my former certificate, and of such a nature as to completely disable him at the present time from obtaining a livelihood by any manual labor.

JOHN FREDERICK MAY, M. D.

WASHINGTON, *January* 14, 1852.

Sworn to before—

H. NAYLOR, *J. P.*

JANUARY 15, 1852.

No. 4.

Certificate of C. W. C. Dunnington, Captain of the Police of the Capitol.

At the request of Mr. Wirt, I will state that I have known him for the last six years, being associated with him in the Capitol police. That he has suffered during that time from a wound received in the discharge of his duty; that he is now unable to perform the duty required of him, though he exerts himself to do more than the state of his health warrants. Whatever service he is able to perform, he does cheerfully, and is frequently exposed to the inclemency of the weather when he should be in his room. I have no doubt the wound he has received has been the great cause of his ill health, frequently, after much exertion, incapacitating him from moving about without great pain and inconvenience.

C. W. C. DUNNINGTON,
Principal of Capitol Police.

JANUARY 14, 1854.

FEBRUARY 28, 1856.

I certify that Mr. Wirt's disability still continues, and that he is not capable of performing police duty.

C. W. C. DUNNINGTON,
P. C. P.

No. 5.

Certificate of B. B. French as to his knowledge of my health and constitution from 1836 *to* 1854.

WASHINGTON, *January* 14, 1854.

GENTLEMEN: At the request of Mr. J. L. Wirt, I make the following statement:

I have known Mr. Wirt intimately since he first came to the Capitol as one of the police in 1836. Up to the 23d day of April, 1844, Mr. Wirt was a strong, healthy, and able-bodied man, who could endure as much fatigue as any man I was ever with, which I often tested in long and fatiguing shooting excursions.

On that day, when I was present, in the hall of the House of Representatives, a difficulty occurred between two members, when the Sergeant-at-arms interfered, and a man by the name of Moore, not a member or officer, attacked the Sergeant-at-arms. Much excitement ensued, and the police, in conformity with their duty, moved toward the hall. Just as Mr. Wirt was entering the door, Moore discharged a pistol, the ball from which entered Mr. Wirt's leg between the knee and hip. He was taken home, and confined to his bed for a long time. The ball was never extracted, and has never healed. From that day to this, Mr. Wirt's health has been declining, and he is now, in the very meridian of life, a broken-down man, so far as health and the ability to endure fatigue is concerned.

He has suffered very much from his wound, and his sufferings will, probably, only terminate with his life.

His case is one in which, if ever man deserved remuneration for injuries received while doing his duty, he deserves it.

Very respectfully, your obedient servant,

B. B. FRENCH.

To the COMMITTEE OF CLAIMS
of the House of Representatives U. S.

No. 6.

Letter of Honorable J. D. Bright.

WASHINGTON, *January* 19, 1854.

I have been requested to state how long I have been acquainted with Mr. John L. Wirt, and his physical condition during the time. My

acquaintance with Mr. Wirt commenced about five years since as a boarder at his house. I have seen him almost daily since, during the sessions of Congress, and bear willing testimony as to his industry, honesty, sobriety, and gentlemanly deportment. Mr. Wirt has been in a feeble state of body, and often confined to his bed in the time I have mentioned, unable to go out of his room; indeed, I have often seen him on duty as a watchman at the Capitol, when he ought to have been under the care of his physician. I have often advised him to keep his room, telling him that he endangered his life by exposure. I understand the chief cause of Mr. Wirt's feeble health to arise from a wound he received from a pistol shot in the Capitol, in endeavoring to suppress a fight in the hall of the House of Representatives some years since. It may not be out of place here for me to state what I have said to others, and that is, that Mr. Wirt has, in my opinion, a just claim upon the government for an annual pension, and his case is one that addresses itself, by every humane consideration, to the favorable action of Congress.

Mr. Wirt is at liberty to make any use of this letter he may deem proper.

JESSE D. BRIGHT.

No. 7.

Certificate of Dr. J. A. Ritchie.

Having known Mr. John L. Wirt intimately from early boyhood to the present time, I have had every opportunity to acquaint myself with his once vigorous and active constitution, and to witness the decline of his health, and the manifest cause of its impairment.

Previous to the receipt of the wound in his thigh at the Capitol, in 1844, I certainly never knew a more robust and vigorous constitution than his, nor one more capable of endurance and fatigue. After a long and harassing confinement from that wound, having patiently endured every painful exploration that surgical skill could suggest to extract the ball from its position, without avail, he arose from his bed enfeebled and suffering to resume his post at the Capitol.

Incapacitated as he had been by this unfortunate accident, from the performance of manual labor, or bodily exertion of any kind, with a family dependent on him for support, he was still stimulated to the discharge of his usual duties.

I have no doubt but what the exertions necessary to enable him to discharge those duties, exposing him night and day to the inclemencies of the season, and the sufferings from the discharge of the wound, have contributed to undermine his debilitated constitution, and bring on the serious disease under which he now labors.

Respectfully,

JOSHUA A. RITCHIE, M. D.

JANUARY 21, 1854.

No. 8.

Letter of testimony of A. K. Arnold.

JANUARY 21, 1854.

At the request of Mr. John L. Wirt, I cheerfully give my testimony as to his present state of health, to be used before the committees of both houses of Congress.

I was appointed one of the police of the Capitol of the United States on the 1st day of September last, and associated with Mr. Wirt as a colleague, on duty every other night and day.

It seriously distressed me to hear him cough and strain every morning, to such an extent that I apprehend his breaking a blood-vessel, if he exerts himself in the slightest manner. So feeble is his health at this time, that changes of weather seriously affect him—sometimes confining him to his house and his bed; he experiences great distress in breathing by ascending a single flight of steps, or walking up a hill, which has induced the police and watch in the Capitol grounds to close the gates assigned to him as his duty, so as thereby to relieve him from performing this duty, which I believe he would do if he had to crawl to do it. My candid opinion is, that if he continues to endeavor to discharge the duties of his present position, he will soon terminate his existence.

A. K. ARNOLD.

DISTRICT OF COLUMBIA, *Washington County*, } *to wit:*

I do hereby certify that Mr. John L. Wirt's disability continues as bad as ever.

Witness my hand, this third day of March, 1856.

A. K. ARNOLD.

No. 9.

Testimony of J. H. Wailes.

WASHINGTON, *January* 21, 1854.

At the request of Mr. J. L. Wirt, I pen this, my intimate knowledge of his state of health, to be used by him as evidence in his case before the committees of both houses of Congress.

My first acquaintance with Mr. J. L. Wirt was in 1836, when first appointed one of the police of the Capitol. He then was young, sprightly, healthy, and active, and an efficient officer. In April, 1844, he was wounded by a shot while he was in the discharge of his duties as police officer of the Capitol at the door of the House of Representatives; after he received the wound he was for a long time confined, and when able to get out he was obliged to use crutches; he has, to my knowledge, many a time, over and over again, risked his health and life by his over-exerting himself to discharge his duty to the government. While suffering from the painful effects of the wound, which prevents him from moving actively in the open air, while he

was on duty with me in inclement weather he was often exposed for hours together in rain and cold, days and nights in succession. We were together three years up to the day of my dismissal from office, September 1, 1853. Since Mr. Wirt received the wound above mentioned, he has been severely afflicted with a violent cough and shortness of breath, to such an extent that he cannot, at this time, ascend a flight of steps, or walk up hill, or exert himself in the slightest degree, without suffering great distress. Since Mr. Wirt received the wound his health has been getting worse; he is so badly afflicted that I have often been apprehensive that he would break a blood-vessel, or fall dead from the effects of asthma, produced by his daily spells of coughing, brought on by his willingness and determined disposition to do the duty required of him. I have often, through sympathy for him, done part of his duties, so as to relieve him all I could; and I do believe that the exposure and exertion in the discharge of his duties day and night, for the support of himself and his interesting family, will soon prove fatal to him.

I remain, with great respect, your colleague,

J. H. WAILES.

No. 10.

Letter of General J. Lane.

HOUSE OF REPRESENTATIVES, *January* 30, 1854.

My acquaintance with John L. Wirt, esq., dates from the first day of December, 1851. I have boarded at his house the greater part of the time Congress has been in session since that time. My acquaintance has, therefore, been of a character sufficiently intimate to furnish me ample means of becoming well acquainted with his general health, which has been uniformly feeble. I have often seen him on duty at the Capitol, exposed day and night to every inclemency of weather, when, in my judgment, he ought to have been in the hands of his doctor and in a comfortable room. Some years since, while in discharge of his duty, in attempting to arrest and put down a riot in the House of Representatives, he received a pistol shot in the thigh, which has made him a cripple for life. The wound in question has become a continued running sore, seriously affecting his general health, and is no doubt the main and first, if not the only cause of his present debilitation and ill health. His present position in the police service has doubtless done much to aggravate the disease arising from this wound.

He is now the victim of chronic disease beyond the power of complete eradication, though his existence might be prolonged by pursuits less arduous and exposed than those incident to his present position. He is a gentleman of strict integrity and honor, and has ever shown himself a faithful and efficient officer.

I believe that principles of equity and sound justice dictate that,

having received this wound in the strict and, I may say, brave discharge of his duty, he should not be permitted to suffer without just remuneration; and that his case appeals not so much to your generosity as to your sense of equal and exact justice.

The pecuniary circumstances of Mr. Wirt being quite limited, the same sense of justice suggests the prompt, as it would be just, exercise of your action for his much-needed relief.

Believing thus, I can do no less than respectfully submit for your generous consideration, with the hope that it may not be in vain to Mr. Wirt's petition for relief, the facts above stated.

Your obedient servant,

JOSEPH LANE.

[Mr. Wirt is at liberty to use this letter before the committee, or otherwise.]

No. 11.

Affidavit of Alexander Gillespie.

WASHINGTON, D. C., *February* 27, 1856.

I hereby certify that, on or about the 23d of April, 1844, I was employed as a messenger of the House of Representatives in attending to one of the doors leading to the hall, at the time a difficulty occurred between two members of the House, which created great disorder and confusion. William S. Moore, of Kentucky, drew a pistol, fired it, and I saw John L. Wirt, one of the police officers of the Capitol, as he came out of the door I was attending—said Wirt having received a severe wound in the right thigh by the ball shot from the pistol in the hands of Moore.

A. GILLESPIE.

Sworn to and subscribed before me, this 27th day of February, 1856.

C. W. C. DUNNINGTON, *J. P.*

No. 12.

A certificate of Dr. John F. May.

MARCH 3, 1856.

I certify that the thigh of John L. Wirt has, within the last three months, again gathered in front, and required to be opened; and that there is now in that part of the limb a considerable ulcer, attended with free discharge daily.

JNO. FRED. MAY, M. D.

34th Congress, 3d Session. } HOUSE OF REPRESENTATIVES. { Report No. 30.

THOMAS M. NEWELL.

[To accompany bill H. R. C. C. 15, and S. No. 409.]

December 19, 1856.

Mr. Taylor, from the Committee of Claims, made the following

REPORT.

The Committee of Claims have had the bill reported for the relief of Thomas M. Newell by the Court of Claims under consideration, and now report:

The evidence submitted to the Court of Claims, and which is now before us, shows that the claim of Thomas M. Newell would have been at any time paid by the Navy Department, if application had been made for payment by the claimant before his claim was preferred to Congress, and that the only obstacle to its payment at the time the attention of the department was called to it, whilst the claim was pending before the Court of Claims, grew out of the fact that it is a rule of all the departments of the government that nothing shall be done in relation to any claim which had been carried before Congress, until its final action on it.

Under the circumstances shown, it is evident that the claim of Thomas M. Newell was not one which ought to have been presented to Congress or carried before the Court of Claims, and your committee are of opinion that it would be improper to set a precedent unnecessarily by passing an act for the payment of a claim under existing laws, when its payment had not been at any time refused by the proper accounting officer. All that is necessary to enable the claimant to be paid the amount he is entitled to by law, is to rid him from the effect of his premature and unnecessary application to Congress for relief, and your committee, therefore, report a bill to that effect, by way of substitute for the one before us, and recommend its passage.

Navy Department, *August* 11, 1856.

Sir: I have the honor to acknowledge the receipt of your communication of the 6th instant, sending the bills and papers relating to the claims of Joseph D. Beers, Thomas M. Newell, George A. Magruder, and John P. Baldwin, and desiring to be put in possession of

all facts known to this department in relation to these claims, which go to set forth their nature, merits and demerits.

The facts as stated in the memorial of Mr. Beers are believed to be mainly correct, and I send for your information the opinion of the Attorney General of November 14, 1851, in the case, which governed the department in its refusal to allow him interest or damages.

In the case of Thomas M. Newell, I am informed by the Fourth Auditor that if he had made application to his office his pay as claimed would have been allowed him; but instead of so doing, he applied to Congress, and it is a rule of the accounting officers that where an appeal has been made to Congress it is not proper to anticipate its action, and the claim has not since been allowed.

The claim of George A. Magruder having been several times refused by the department, it was by him carried to Congress, and for a full understanding of the case I transmit herewith, a copy of the report in the matter from the department to the Naval Committee of the Senate, and copies of the letters referred to in said report; also the Fourth Auditor's letter on the subject.

In relation to the claim of John P. Baldwin, the department has no information whatever on the subject.

I return, herewith, the papers in the several cases, the bills having been returned on the 7th instant.

I am, very respectfully, your obedient servant,

J. C. DOBBIN.

Honorable J. R. GIDDINGS,
Chairman of the Committee of Claims,
House of Representatives.

REPORT No. 27.

To the Hon. the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of Thomas M. Newell *vs.* the United States:

1. The petition of the claimant.
2. Documents presented by the claimant as proof.
3. Opinion of the court.
4. Bill for the relief of claimants.

By order of the court of claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 10th day of July, A. D. 1856. [SEAL.]

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 31.

GEORGE BERRY, ESTHER MASSEY, JAMES GATES, AND MICHAEL ALSPACK.

DECEMBER 26, 1856.—Laid upon the table, and ordered to be printed.

Mr. BRENTON, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom were referred the memorials of George Berry, Esther Massey, James Gates, and Michael Alspack, all of the State of Ohio, praying for relief by an amendment of the bounty land law of 3d March, 1855, having examined said memorials, beg leave to report adversely to the prayer of the memorialists.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 32.

CITIZENS OF THE STATES OF NEW YORK, MASSACHUSETTS, MAINE, AND OHIO—BOUNTY LAND.

DECEMBER 26, 1856.—Laid upon the table and ordered to be printed.

Mr. BRENTON, from the Committee on Public Lands, submitted the following

REPORT.

The Committee on Public Lands, to whom was referred several petitions from the citizens of the States of New York, Massachusetts, Maine, and Ohio, praying relief by an amendment of the bounty-land law, so as to authorize the issuing of land warrants for services rendered for a less period than fourteen days, respectfully report adversely to the prayer of the petitioners.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 33.

JAMES GARDNER.

DECEMBER 26, 1856.—Laid upon the table and ordered to be printed.

Mr. BRENTON, from the Committee on Public Lands, submitted the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of James Gardner, of Albany, New York, "asking for a land warrant for services rendered as a marine in the war with France in the years 1799 and 1800," having considered the case, are of the opinion that the provisions of the general law are altogether sufficient to afford the relief prayed for, and therefore ask to be discharged from its further consideration.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 34.

J. W. SANDERS ET AL. IN BEHALF OF SAMUEL STONE.

DECEMBER 26, 1856.—Laid upon the table, and ordered to be printed.

Mr. BRENTON, from the Committee on Public Lands, submitted the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of J. W. Sanders and others, of Wisconsin, for a grant of one hundred and sixty acres of land to Samuel Stone, beg leave to report adversely to the prayer of the petitioners.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 352

ADAM KING, ET AL.—AMEND BOUNTY LAND LAW.

DECEMBER 26, 1856.—Laid upon the table, and ordered to be printed.

Mr. BRENTON, from the Committee on Public Lands, submitted the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of Adam King et al., also of certain citizens of Missouri, asking for an amendment of the bounty land law, so as to allow the heirs of the deceased soldier, without regard to age, to obtain a warrant for the services rendered, beg leave to report adversely to the prayer of the petitioners.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 36.

THOMAS JENKINS.

DECEMBER 26, 1856.

Mr. SIMMONS, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the petition of Thomas Jenkins, of the city of New York, praying for the relief of his real estate, situated in the city of Hudson, from the lien of two judgments, entered in favor of the United States on the 13th day of September, 1816, *in the southern district court of the United States for the State of New York, against one Caleb Gibbs and one Thomas Jenkins, as defendants in said judgments, respectfully report:*

That upon the examination of the petition and accompanying documents, duly verified, your committee are satisfied that the petitioner never was a party defendant in said judgments, and that said judgments were entered against another person of the same name, then residing in the said city of New York, where the judgments were entered and docketed; that the petitioner is, and has been for many years, the owner of a house and lot of land in the city of Hudson, within said judicial district, which he is desirous of selling, but is prevented from selling the same to advantage by reason of the closed or supposed lien of said judgments upon said property; that said petitioner, since he ascertained the existence of said judgments, has been unable to ascertain the consideration of said judgments or the real parties defendants therein.

Your committee therefore recommend the passage of an act releasing the real estate of the said Thomas Jenkins, situated in the city of Hudson, from the lien of said judgments, and have introduced a bill for that purpose.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 37.

CAPTAIN FREDERICK STEELE.

[To accompany bill H. R. No. 647.]

DECEMBER 26, 1856.

Mr. B. CLARKE, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Brevet Captain Frederick Steele, United States army, respectfully report:

The evidence proves that the memorialist, in the month of May, 1849, whilst at San Francisco, California, was appointed by his commanding officer, Major A. C. Miller, of the second infantry, acting assistant quartermaster and commissary to a detachment of infantry then under orders for the mining districts east of the San Joaquin river. By this appointment he was required to take charge of funds necessary for the command to the amount of nine thousand dollars, all in silver. He applied for a safe in which to keep the money securely, but only one could be obtained, which was small in size, and would only hold about six thousand dollars of the money. The remaining $3,000 he had to receive in a wooden box, well secured with screws. With the money thus put up, it was transported by steamer to Stockton, thence in a wagon to a camp thirty miles distant. At this camp the wooden box was put away in the tent of Lieut. Morse, contiguous to that of the commanding officer, and within the sight of three separate sentinels. Capt. Steele had often to visit Stockton, the stores of the command being kept there on board of a chartered brig, and being, in addition to his duties as quartermaster and commissary, in command of one of the companies of the detachment, was necessitated also often to be absent in pursuit of deserters, he being the only officer of his company with it. On the fourth of July, 1849, he was ordered to Stockton on official business, whither he proceeded, and having closed it immediately, returned that night to the encampment. Immediately after his return, he was struck by the appearance of the wooden box, which had contained the three thousand dollars, and upon examining it, discovered that it had been broken open, and the money stolen. An investigation was instantly instituted, and five hundred dollars reward offered for a clue to the robbery, but all without avail; the thief or thieves was never discovered, or the money recovered.

The three thousand dollars so lost stands charged against Captain Steele on the books of the government, and it is to have the same

allowed him in the settlement of his accounts that he now memorializes Congress.

The committee, looking at the condition of California in 1849, are struck with the exercise of the vigilance which marked Captain Steele's care of the amount of money placed in his hands. In a new country, where the means for the safe keeping of money were limited, he had imposed upon him the custody of nine thousand dollars in the most bulky form, that of silver; the necessities of the service, and, indeed, the absence of any other coin in the country, forced the officer to take it in that heavy, bulky and inconvenient shape. He procures the best safe he could, and placing in it all that it would hold, he secures the balance in a box which he stows away in an officer's tent, within the sight of three sentries. If Captain Steele's duties confined him to the one place in the vicinity of this money, he might be somewhat culpable for its loss; but when the fact is observed that his legitimate duties as an officer in command of a company had to be discharged by him, and that a branch of the very extra duty which involved his custody of this stolen money required him to be often absent at Stockton, where the quartermaster's and commissary's stores were kept on a chartered brig, and which was a distance of thirty miles from the camp, Captain Steele must have been omnipresent, to have been in direct observation of this box of money at all times. He certainly could not have carried it about him wherever he went; and the committee think it was kept by him in as safe a place as the genius of any one could devise, looking at the country where he was, and the fact that he was in an encampment thirty miles from town.

The committee, believing that the loss of the money was not owing to the want of any due diligence on the part of Captain Steele, report the accompanying bill for his relief.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 38.

CHARLOTTE TURNER.

[To accompany bill H. R. 399.]

DECEMBER 26, 1856.

Mr. MAXWELL, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of Charlotte Turner, of Louisiana, praying relief, &c., submit the following report:

That the petitioner, in the year 18—, took possession of the east half of southeast quarter of section twenty-one, and the west half of southwest quarter of section twenty-two, township three, and began the cultivation of the same, as by law she could rightfully do, intending to pre-empt it. It appears that in taking the necessary steps to secure her right she was misled as to the proper designation of said tract by reason of erroneous surveys. That upon subsequent survey by the government to correct said errors, it was found that the tract of which she had possession was not the tract, as designated by numbers, which under the previous survey she had named as the one she sought to pre-empt. At the land office she was not permitted to perfect her pre-emption because of the mistake specified. It is shown that she has all along continued to cultivate the tract in good faith, and your committee do not see that she should be made to suffer the loss of her right to pre-empt, as the fault or mistake was not her own, but that of the government.

Your committee, therefore, report the accompanying bill for her relief and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 39.

SHADRACH RICE.

[To accompany bill H. R. No. 648.]

DECEMBER 26, 1856.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the memorial and papers of Shadrach Rice, of the county of Jackson, in the State of Virginia, submit the following report:

It appears by the memorial and accompanying declarations that Shadrach Rice, now in the 86th year of his age, enlisted on the 28th day of November, A. D. 1792, under General Wayne, and served for three years; that he was in the engagemnt at Fort Recovery, and also in the battle at the rapids of Maumee. During the term of the service referred to, in an engagement with a party of Indians, Shadrach Rice received a severe and dangerous wound from the hands of an Indian, who thrust his knife through Rice's body, entering below the collar bone and coming out on the back of the shoulder. He never entirely recovered from the effect of this wound. Being able, however, to maintain himself, he never before applied for a pension. Advanced age has increased the disability from the effects of the wound, and he is now helpless nearly, and consequently in the evening of his life penniless. In view of his valuable services to the country, and believing him justly entitled to the generous consideration of the government and country, for which he underwent severe hardships and suffered so much, your committee report the accompanying bill, giving a pension of eight dollars per month for the term of the natural life of Shadrach Rice, to commence from the 15th day of October, 1855, the period at which satisfactory proof of his services was completed.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 39.

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34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 40.

SHAB-EH-NAY—INDIAN CHIEF.

DECEMBER 26, 1856.—Laid upon the table and ordered to be printed.

Mr. PRINGLE, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of George Wells and others; the petition of John Arman and others; and the petition of R. K. Swift and others; in behalf of the Indian chief Shab-eh-nay, respectfully report:

That they have had the same under consideration, and have come to the conclusion that the prayer of the petitioners ought not to be granted. For the reasons that have influenced your committee to come to this conclusion they refer to the annexed letter from the Commissioner of Indian Affairs, and to the copy of a letter from a late Commissioner of Indian Affairs accompanying the same.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, April 12, 1856.

SIR: I have the honor to acknowledge the receipt of your letter of the 9th instant, with enclosures, relative to the claim of "Shab-eh-nay," a chief, for whose use a reservation was made in the treaty of July 29, 1829, with the Chippewa, Ottawa, and Potawatomie Indians; and requesting, in behalf of the Committee of Claims of the House of Representatives, a statement of the facts involved by the claim as far as known to this office.

In reply, I have to state, that by the 3d article of the said treaty there was reserved for the use of the said "Shab-eh-nay *and his band* two sections of land, at his village near the Paw-Paw grove."—(Statutes at Large, vol. 7, p. 321.)

By the subsequent treaty with the same Indians, concluded at Chicago on the 26th of September, 1833, it was by the 5th article thereof, amongst other things, stipulated as follows: "The reservation of two sections of land to Shab-eh-nay by the 2d clause of the 3d article of the treaty of Prairie du Chien, of the 29th of July, 1829, shall be a grant in fee simple to him, his heirs, and assigns forever."—(Statutes at Large, vol. 7, p. 433.)

The Senate of the United States refused to ratify this provision, and struck out the 5th article entirely.—(Statutes at Large, vol. 7, p. 447, note.)

Shab-eh-nay emigrated with his tribe west of the Mississippi, to lands provided for them by the government, having disposed of his interest in the reserve to Messrs. Ansel A. Gates and Orrin Gates. I do not understand this emigration, however, to have been in any manner forced or involuntary; but only in compliance with their treaty stipulations. On the 6th of May, 1848, the deeds to Messrs. Gates were submitted to this office by the Hon. John Wentworth, of Chicago, with the request that the same should be presented to the President for his approval; and upon application, it was decided by the Commissioner of Indian Affairs, Hon. Wm. Medill, that the treaty gave no authority to the reservee to sell the land. It was reserved for the *use* of himself *and his band* only; that when the parties for whose use it was reserved left it, it was competent for the United States to sell it, as other land ceded by that treaty, which had not been expressly granted to individuals named therein; that the action of the Senate upon the 5th article of the treaty of September 26, 1833, before mentioned, confirmed this view; that as the lands referred to were no longer occupied by the persons for whose use they were reserved, it was competent for the Commissioner of the General Land Office to dispose of the same as other public lands of the United States. The commissioner therefore declined to recommend the said deeds for the approval of the President. A copy of this letter to Mr. Wentworth, dated May 27, 1848, is enclosed.

This decision was communicated to the Commissioner of the General Land Office on the 29th of May, 1848, and thenceforward the land has been considered and treated by this office as a part of the public domain, and under the exclusive control of the General Land Office.

The enclosures received with your letter are herewith returned.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,
Commissioner.

Hon. J. R. GIDDINGS,
Chairman Committee of Claims, Ho. of Reps.

WAR DEPARTMENT,
Office Indian Affairs, May 27, 1848.

SIR: I had the honor to receive your note of 6th instant, in which you ask my attention to the propriety of confirming the three deeds which accompanied it, each executed by Shab-eh-nay, on 1st of December, 1845, in this city; one to Ansel A. Gates for 320 acres; one to Orrin Gates for 320 acres; and one to Ansel A. Gates for 640 acres; and conveying the land reserved for the use of said Shab-eh-nay and his band, by the 3d article of the treaty concluded with the Chippewa, Ottawa, and Potawatomie Indians, on 29th July, 1829.

The treaty gave no authority to Shab-eh-nay to sell the land. It was reserved for the *use* of himself and his band only; and it is the opinion of this office, that when the parties for whose use it was reserved left it, that it was competent for the United States to sell it as other lands ceded by that treaty, which had not been expressly granted to individuals named therein. This view is confirmed by the fact that the 5th article of a treaty concluded with the same Indians on 26th September, 1833, which stipulated that the reservation made by the treaty of 1829 should be a grant in fee simple to Shab-eh-nay, his heirs, and assigns forever, was stricken out by the Senate.

It seems to me, therefore, that as the lands referred to are no longer occupied by the persons for whose use they were reserved, that it is competent for the Commissioner of the General Land Office to dispose of the same as other public lands of the United States.

Very respectfully, your obedient servant,

WILLIAM MEDILL,
Commissioner.

Hon. JOHN WENTWORTH,
House of Representatives, U. S.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 41.

JANE COLLINS.

DECEMBER 26, 1856.—Laid upon the table, and ordered to be printed.

Mr. TAYLOR, from the Committee of Claims, submitted the following

REPORT.

The Committee of Claims, to whom the petition of Jane Collins, with the accompanying papers, was referred, have had the same under consideration, and now report:

The petitioner claims two different sums of money upon separate grounds, as follows: 1st. A sum of $1,400, which she alleges to be due to her upon a fair settlement, for beef furnished by her in 1812, 1813, and 1814, to Cary Jennings, who was, it is said, authorized to make purchases of beef for the army; and 2d. Another sum, which she claims as a compensation for injury which she alleges to have been done to her by the troops of the United States, whilst occupying her premises in the war of 1812, by breaking down her fences, and letting her cattle and other animals escape from her enclosure, so that they were lost.

The proof in the case is altogether too vague, indefinite, and unsatisfactory to justify any action upon it. If, however, it established the allegations of the petitioner, your committee are of opinion that there would be nothing in the facts which would entitle her to any relief from Congress.

Persons employed by the government to make purchases for the use of the army, are not authorized to purchase on the credit of the United States. If they buy anything on a credit, it is on their own credit, and the party selling to them must look to them exclusively for payment. In the present instance, it seems from the statement of the petitioner that Cary Jennings, on the settlement of his accounts, proved a defaulter to the government. This fact alone is sufficient to show that the person with whom she dealt was entrusted by the government with its funds for the purpose of making purchases for its use, not that he was authorized to purchase for its account on a credit. Under such circumstances, no shadow of claim can exist against the government for the payment of any sum which Jennings might have failed to pay the petitioner for anything he bought of her. The government, when it entrusts a person with money to be expended for its benefit, risks the loss of the money by his unfaithfulness, but most certainly can

incur no obligation to submit to any further loss because that person may have acted with bad faith in his transactions with others.

And again, with respect to the other ground of claim. If the petitioner met with the losses which she sets forth, in consequence of the misconduct of the troops of the United States whilst occupying her premises, she was, beyond all doubt, entitled to compensation, either from the persons causing the damage, in their individual capacity, or from the United States. If from the United States, she could have demanded it at the time from the officer in command of the detachment, to whom it would have been allowed in the settlement of his accounts. Claims of such a nature against the United States require no special legislation to authorize their payment. The officers charged with making the disbursements necessary to keep an army in the field, and make it effective in its movements, are clothed with the power requisite for their payment; and every principle of sound policy forbids that claims of such a character should be investigated, with a view to their recognition and payment, by any other agents of the government than those who had a personal knowledge of the facts giving rise to them.

Your committee recommend that the claims of the petitioner be rejected.

Petition of Mrs. Jane Collins asking compensation for supplies furnished and losses sustained during the war of 1812.

To the honorable the Senate and House of Representatives, in Congress assembled:

The petition of Jane Collins, widow of Philip Collins, deceased, respectfully showeth, that she is now aged eighty-four years and upwards, and is in a helpless condition, entirely destitute of the comforts of life. That during the war of 1812, when she was a widow with a large family, she contracted with a certain Cary Jennings, who was the then authorized agent to purchase beef and other provisions for the army, then stationed at Norfolk, Virginia, to furnish said army with a large quantity of beef, which she did during the years 1812, '13 and '14; that upon a fair settlement or statement of her accounts with said agent, the government was found to be indebted to your petitioner in the sum of fourteen hundred dollars or thereabouts, which to the present time has never been paid to her or to any person for her use or benefit. The then agent, Cary Jennings, having become a defaulter in a large amount, your petitioner further showeth that, though she often tried to obtain payment from the said Jennings of the said amount so justly due her, she utterly failed to do so. Your petitioner, soon after the commencement of the war, removed her children into the interior of North Carolina, where they remained during the war, but returned herself to the city of Norfolk, and continued to furnish provisions as aforesaid. And your petitioner further showeth that the troops were quartered on her premises, then and now called and known as Slaughter's Field; that she was by the occupancy of

said troops prevented from cultivating the same, and that her enclosures were broken down, and her cattle, numbering one hundred, turned out, which she never afterwards recovered; and her crop of the first year entirely destroyed; and during the balance of said war her lands were uncultivated; that the sick were taken to her own house, nursed, fed and provided for, and no charge was then made for the same; that your petitioner several times went to Richmond on business for the government, in her own conveyance, and at her own expense.

And your petitioner further represents that at that time she was in affluent circumstances, but has since been reduced to poverty, when she has become old and afflicted, by endorsing for a certain Thomas B. Seymour, of the city of Norfolk, to the amount of thirty-five thousand dollars, which she has been compelled to sell her property, and pay.

Your petitioner never would have called on the government for assistance if she had not thus been reduced to poverty and want, always having felt the strongest attachment for the country of her adoption and choice. Your petitioner herewith presents the certificates of gentlemen of the highest respectability, substantiating much that is set forth in her petition; nor has your petitioner set forth half of the trials, labor and expense she underwent during said war, nor does she deem it necessary now minutely to describe them.

In view of the present helpless and destitute condition of your petitioner, she would most humbly pray and entreat your honorable bodies to grant her a fair and adequate compensation for her honest and just demand on the government. And your petitioner, as in duty bound, will ever pray, &c. JANE COLLINS.

NORFOLK, VIRGINIA, *December* 20, 1855.

I, William Roberts, of the city of Norfolk, aged seventy-two years, do hereby certify that I am intimately acquainted with Jane Collins, whose petition is hereto annexed; that during the war of 1812 she was the owner of the tract or parcel of land near Norfolk called and known by the name of Slaughter's Field, which was occupied by the American army during said war; and further know, to my own personal knowledge, that her enclosures were thrown down, and many of her cattle, sheep, and hogs escaped, which she never afterwards recovered; and was also prevented from the cultivation of said farm for the term of three years; and although she has met with many misfortunes, that have reduced her to poverty and want, she never would have asked your honorable bodies to have given her anything for the hard service and loss, but for affliction and old age. I was stationed on the said Slaughter's Field, and remember the circumstances well; and having received the said petition of the said Jane Collins, I have no hesitation in certifying that I believe the facts and statements therein contained are true and to be relied on.

Given under my hand this 7th day of January, 1856.

WILLIAM DREW ROBERTS.

I, William Bolsom, of the city of Norfolk, aged sixty-three years, do hereby certify that I am well acquainted with Jane Collins, whose petition is hereto annexed; that during the war of 1812 she was the owner of the tract or parcel of land near Norfolk called and known by the name of Slaughter's Field, which was occupied by the American army during the said war; and the troops thereon stationed threw down her enclosures, and turned out a large quantity of beef cattle, sheep and hogs, which she never afterwards recovered, as set forth in her said petition; and I am fully convinced that your within named petitioner would not make application to your honorable body but for poverty and actual want; and having received the said petition of the said Jane Collins, I have no hesitation in certifying that I believe the facts and statements therein contained are true and to be relied on.

Given under my hand, this 5th day of January, 1856.

WILLIAM BOLSOM.

B. F. BOLSOM.

I, John D. Ghiselin, of the city of Norfolk, aged sixty-three years, do hereby certify that I am well acquainted with Mrs. Jane Collins, whose petition is hereto annexed; that during the war of 1812 she was the reputed owner, and I verily believe the real owner, of the tract or parcel of land near Norfolk, called and known by the name of "Slaughter's Field," which was occupied by the American army during the said war, and have no doubt she suffered great loss by the destruction of fences and loss of stock, &c.; and I am fully convinced she would not ask of your honorable bodies payment for her losses if she did not believe she was justly entitled to it, and from age and infirmity and poverty greatly needing it.

JOHN D. GHISELIN.

I hereby certify that, during the last war with Great Britain, a detachment of the militia troops stationed here, under command of Brigadier General Porter, were quartered on the estate understood to have been purchased by Mrs. Jane Collins from the late Dr. Slaughter, and belonging to her at that time. The place was usually denominated and known as "Slaughters," or "Slaughter's Fields." I was, during the time, in the employment of Robert C. Jennings, assistant commissary of purchases, &c.

F. GATEWOOD.

NORFOLK, *December* 22, 1855.

I, William Collins, of the city of Norfolk, aged fifty-three years, do hereby certify that I am the son of Jane Collins, whose petition is hereto annexed; that during the war of 1812 she was the owner of the tract or parcel of land near Norfolk called and known by the name

of Slaughter's Field, which was occupied by the American army during said war; and further know, of my own personal knowledge, that her enclosures were thrown down and one hundred head of beef cattle and a large quantity of hogs escaped that she never afterwards recovered; and that she was also prevented from cultivating said premises during said war; during which time I was frequently assisting her in the prosecution of her daily work. And having received the said petition of the said Jane Collins, I have no hesitation in certifying that I fully believe the facts and statements herein contained are true and to be relied on.

Given under my hand this 5th day of January, 1856.

WM. COLLINS.

Witness: G. G. GARRISON,
GEO. W. STARRS.

I, Nathaniel Wilson, of the city of Norfolk, aged sixty-five years, do hereby certify that I am well acquainted with Jane Collins, whose petition is hereto annexed, and that during the war of 1812, she, said Jane Collins, was owner of a tract or parcel of land near Norfolk called "Slaughter's Field," which was occupied during a portion of said war by the 95th regiment, commanded by Colonel Thomas Lee, and that the officers and men had entire possession of said farm and buildings; and I also know that said Jane Collins furnished beef to the soldiers, as I myself regularly carried orders from Cary Jennings to said Jane Collins for the same twice a week during a portion of said war; and that I have always understood that she lost a considerable sum of money about that time, and had her property sold from her. I have no hesitation in saying that I believe she suffered in the contract with Jennings, and also in the occupation of her farm by the soldiers in the aforesaid war.

Given under my hand this 12th day of January, 1856.

NATHANIEL WILSON.

NORFOLK, *January* 3, 1856.

I certify that the general facts stated by Mrs. Jane Collins, of this city, in her petition to the legislature of Virginia, are correct, to the best of my knowledge and recollection. I have not the least doubt she has, in one way or other, sustained losses to the full amount she sets forth in her petition, by her patriotic sacrifices for the service of her country.

THO. G. BROUGHTON,
Ex-Lieutenant 8th Regiment Virginia Militia,
in service of the United States, 1814.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 42.

ROSS WILKINS, JAMES WITHERELL, AND SOLOMON SIBLEY.

[To accompany bill H. R. 645.]

DECEMBER 26, 1856.

Mr. SIMMONS, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom were referred the memorial of Ross Wilkins and the petition of B. F. H. Witherell, report:

These are applications from one of the judges of the Territory of Michigan, and from the son and legal representative of another, to be allowed the benefits of the act of the last session of Congress entitled "An act to provide compensation for the services of George Morell, in adjusting titles to land in Michigan." This act allows compensation to Judges Chipman and Woodbridge as well as to Judge Morell, and the same reasons which justified the payment to them, as members of the "land board" in virtue of their judicial tenures, would seem to require that like compensation should be allowed to the other judges. The accompanying bill merely extends the operation of the act of last session so as to embrace the other judges. A full statement of the case will be found in report No. 91, first session thirty-third Congress.

IN THE SENATE OF THE UNITED STATES, *February* 7, 1854.

Mr. WILLIAMS made the following report:

[Rep. Com. No. 91, to accompany Bill S. 193.]

The Committee of Claims, to whom was referred the memorial of Maria Morell, widow of the late honorable George Morell, one of the judges of the supreme court of the Territory of Michigan, praying compensation for the services of her late husband as a member of the board for the adjustment of land titles in Detroit, have had the same under consideration and report:

It appears that the honorable George Morell was appointed, in the year 1832, one of the judges of the supreme court of the Territory of Michigan, and continued to fill that office until the admission of that

State into the Union, in 1836. During that period, up to September 24, 1836, as appears from the statement of A. S. Kellogg, the last secretary of the "land board," Judge Morell devoted much of his time to the duties of said "board," and was a very active and efficient member thereof. The statement of said Kellogg is hereto annexed.

At the last session of Congress the Senate passed a bill to compensate Judges Woodbridge and Chipman, who were members of the same board, for their services thereon, at the rate of $500 per annum. The committee are of opinion that that sum is not more than a just remuneration for the services required and rendered; they therefore report a bill allowing Judge Morell the same rate of compensation, and recommend its passage.

The principles and reasons governing the case are fully stated in the report of the Committee on the Judiciary, made in the parallel case of Judges Woodbridge and Chipman, (before alluded to,) and which is hereto annexed and made a part of this report.

IN THE SENATE OF THE UNITED STATES, *February* 15, 1848.

The Committee on the Judiciary, to whom was referred, on the 5th of January, the memorial of William Woodbridge and Henry Chipman, report:

That by the act of Congress of the 21st April, 1806, "to provide for the adjustment of titles of land in the town of Detroit and Territory of Michigan, and for other purposes," the duty and responsibility of its execution devolved upon the governor and the judges of the Territory of Michigan, to whom a further specific duty was assigned by the act of the 28th May, 1830.

By the acts of Congress for the government and regulation of the Territory of Michigan, these officers were charged with the highly important and varied duties appertaining to their respective positions, the responsibilities and the mental and physical labors of which demanded their unremitted attention, and for which the acts of Congress creating those offices designed to do no more than to make a just and adequate compensation, and which, it has been found, has been less than that attached to similar offices in other Territories of the United States.

The acts of Congress of 1806 and 1830, prescribing these extra official duties and responsibilities, were confined to the single purpose of imposing those extraordinary services, without embracing, as other acts in similar cases have done, the correlative provision to render a proper compensation for them.

It is true that the government has the power to direct the performance of varied and irrelevant services by a public officer, whose official duties have been defined and fixed by the statute and the common law or usage, while the public officer is bound to obey the law, however onerous or even oppressive the duties and responsibilities which may have been thus superadded to his regular official duties; but in most,

if not all of these cases, the government has in view important advantages to its interests, in securing the due execution of its laws and in administering impartial justice towards and between its citizens, by availing itself of the experience and the tried integrity and intelligence of its officers.

In many cases the additional duties and responsibilities enjoined upon its officers are irrelevant, if not foreign to those of the officer upon whom they have been so enjoined; but in a large portion of these cases, such additional duties, being comparatively trivial in their character, or of a nature foreign to the power of any particular office, and of short duration, would not seem to require, nor would officers performing them expect, any pecuniary compensation. The duties and responsibilities for which compensation is now claimed, were of a different character from these, as may be seen by the laws directing their performance, which plainly show their high importance and necessary duration, the extent of which is manifest from the fact, that although commenced in 1806, it was deemed necessary, by the passage of the act of August 29, 1842, to continue and transfer the powers, duties, and responsibilities from the officers to whom they were assigned by the act of 1806, (rendered necessary by the change of the territorial to the State government,) to the mayor, recorder, and aldermen of the city of Detroit, by whom they have been performed for the benefit of the parties interested, since that time.

That it was not the intention of the government, by the omission to provide in the act of 1806 a proper compensation to these officers, to deny the principle or propriety of making such additional compensation, is evident from the fact that several acts approved the same day as that act provided additional compensation to officers in analogous cases, where additional duties similar to those required of the memorialists were prescribed. The amount of compensation in these cases (although more than is claimed by the memorialists) bears but a small proportion, relatively, to the salaries or emoluments that it would have been necessary to provide for commissioners, who might have been appointed exclusively to perform these same duties, which were superadded to the regular duties of these officers; and it may, therefore, be reasonably inferred that, in addition to the higher considerations connected with the assignment of these extra official duties to these officers, it was a measure of economy on the part of the government, since experience, fidelity, responsibility, and an intelligent execution of the law were secured, at perhaps one fourth of the amount that would otherwise be required, to secure the exclusive services of suitable persons, with the risk, at least, of a want of some of those qualifications.

When it is considered that questions arising under these acts for adjusting the titles and settling private claims to land involve intricate questions and principles of law and vast amounts of property, the policy of entrusting these important functions to intelligent and experienced officers, having already the confidence of the government, may be understood, and accounted for in the continual practice of the government upon the subject.

With regard to the allowance of additional compensation coeval with

the imposition of extra official duties, the practice appears to have been almost general, and the omission to provide such compensation when such duties have been enjoined, as in the case now under consideration, seems a departure from such general practice, as an evidence of which, the committee, without intending to include all of the precedents upon the subject, subjoin a list of some of them, with references to the statutes in which they are to be found; and, deeming the claim of the memorialists reasonable and just, the committee report a bill for its payment.

LIST OR STATEMENT OF PRECEDENTS IN WHICH ADDITIONAL COMPENSATION HAS BEEN PROVIDED FOR JUDICIAL OR MINISTERIAL OFFICERS OF THE GOVERNMENT, WHO HAVE BEEN REQUIRED BY LAW, TO PERFORM EXTRA OFFICIAL DUTIES IN ASCERTAINING AND ADJUSTING TITLES AND CLAIMS TO LAND, &c., VIZ:

[Little and Brown's edition of the Laws of the United States will be referred to for the statutes mentioned in the following list.]

Approved.	
March 3, 1803.	Section thirteen of "An act regulating the grants of land, and providing for the disposal of the lands in the United States, south of the State of Tennessee." The commissioners allowed $2,000, and the registers of land offices, acting as commissioners, $500 for services as commissioner. Vide volume 2, page 234.
March 26, 1804.	Section four of "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes." The registers and receivers of three land offices allowed $500 each for services as commissioners.—Volume 2, page 279.
March 3, 1805.	Section five of "An act supplementary to the act entitled 'An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes.'" Each of said registers and receivers allowed a further sum of $500.—Volume 2, page 345.
April 21, 1806.	Section six of "An act supplementary to an act entitled 'An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana.'" Each of the registers of the land offices in the Territory of Orleans allowed, in addition to his other emoluments, $500, for about eight months' services as commissioner under this act.—Volume 2, page 392.
April 21, 1806.	Section three of "An act respecting the claims to land in the Indiana Territory and State of Ohio." Each of the registers and receivers to

Approved.

whom extra official duties were assigned by this act, were allowed an additional compensation of $500.—Volume 2, page 395.

arch 3, 1807. Section six of "An act confirming claims to land in the district of Vincennes, and for other purposes." The register and receiver to be allowed each an additional compensation of $500, for his services, in relation to such claims.—Volume 2, page 447.

ne 13, 1812. Section eight of "An act making further provision for settling the claims to lands in the Territory of Missouri." The recorder allowed fifty cents for each claim decided on, in addition to his salary, and $500 additional compensation on the completion of the business.—Volume 2, page 752.

arch 3, 1813. Section six of "An act allowing further time for delivering the evidence in support of claims to land in the Territory of Missouri, and for regulating the donation grants therein." The recorder of land titles allowed additional compensation similar to the above.—Volume 2, page 815.

arch 3, 1819. Section ten of "An act for adjusting the claims to land, and establishing land offices in the district east of the island of New Orleans." The registers and receivers, respectively, allowed as a compensation for *their services in relation to the said claims*, at the rate of $1,500 a year.—Volume 3, page 531.

arch 3, 1823. Section three of "An act providing for the examination of the titles to land in that part of the State of Louisiana situated between the Rio Hondo and the Sabine river." The register and receiver allowed each a compensation of $500 for the services required by this act, &c.—Volume 3, page 757.

ay 26, 1824. Section thirteen of "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims." "The district judge for the State of Missouri, shall, while in the discharge of the duties imposed by this act, be allowed at the rate of $800 per annum, in addition to his salary as district judge for the State of Missouri."—Volume 4, page 56.

arch 3, 1825. Section eight of "An act to extend the time for the settlement of private land claims in the Territory of Florida, to provide for the preservation of the public archives in said Territory, and for the relief of John Johnson." The commissioners, under this act, were allowed $2,000 per annum, and the register and receiver were each

Approved.

allowed the sum of $1,000 for the performance of the duties required by this act.—Volume 4, page 126.

February 8, 1827. Section six of "An act to provide for the confirmation and settlement of private land claims in East Florida, and for other purposes." By this act the register and receiver were entitled to receive the sum of $1,500 per annum, as a full compensation for the performance of his duties, and *the additional duties*, required by this act, &c.—Volume 4, page 203.

March 3, 1827. Section two of "An act supplementary to the several acts providing for the adjustment of land claims in the State of Alabama." By this act the register and receiver were allowed, as a compensation for their services in relation to said claims, and for the services to be performed under the provisions of the several acts to which this is a supplement, at the rate of $1,000 per annum. Volume 4, page 240.

May 23, 1828. Section four of "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida." By this act the register and receiver were each allowed $1,000, as extra compensation, for acting *ex officio* as commissioners, &c. Certain claims under this act to be received and adjudicated by the judge of the superior court of the district within which the land lies, &c.—Volume 4, page 285.

March 2, 1829. "An act making additional appropriations for the support of government for the year 1829." This act provides for additional compensation to the district judge for the district of Missouri, under the act of 26th May, 1824.—Vol. 4, page 342.

May 8, 1830. Section eight of "An act for further extending the powers of the judges of the superior court of the Territory of Arkansas, under the act of the 26th day of May, 1824, and for other purposes." This act imposed certain duties relating to land claims upon those judges, and enacts, "that each of the judges of the supreme court of the Territory of Arkansas shall, while in the discharge of their duties, imposed by this act, be allowed at the rate of $800 per annum, in addition to their salary as judges of the superior court for the Territory of Arkansas," &c.—Volume 4, page 401.

March 2, 1831. "An act making appropriations for the support of government for the year 1831." This act provides "for compensation to William Cranch,

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chief justice of the circuit court for the District of Columbia, for preparing a code of civil and criminal jurisprudence, in compliance with an act of Congress, approved 29th April, 1816, $1,000." Volume 4, page 457.

r 4, 1832.

Section five of "An act for the final adjustment of the claims to lands in the southeastern land district of the State of Louisiana." By this act the register and receiver of the land office were allowed the sum of $500 each, as additional compensation for additional services therein prescribed.—Volume 4, page 562.

r 9, 1832.

Section four of "An act for the final adjustment of private land claims in Missouri." By this act the recorder of land titles was allowed for his additional services, imposed thereby, the sum of $1,500 per annum.—Volume 4, page 567.

ch 3, 1839.

Section thirteen of "An act in addition to 'An act to promote the progress of the useful arts,'" makes provision that there be paid annually, out of the patent fund, to the chief justice of the district court of the United States for the District of Columbia, in consideration of the extra services imposed by this act, the sum of $100.—Volume 5, page 355.

ch 3, 1845.

Section seven of "An act making appropriations for the civil and diplomatic expenses of the government for the year ending 30th June, 1846, and for other purposes," makes provision for additional compensation to the district judges of Missouri, Arkansas, Louisiana, Mississippi, and Alabama, under the provisions of the first section of the act of 17th June, 1844, the sum of $7,666 67.—Volume 5, page 765.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 43.

BENJAMIN SAYRE.

[To accompany bill R. H. 651.]

JANUARY 9, 1857.

MR. KNOWLTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claimsto, whom the petition and supplemental petition of Benjamin Sayre, together with the accompanying papers, were referred, make the following report:

The petition states that on December 18, 1832, the petitioner and Ezra Rogers, then partners, entered into an agreement with the United States, by John Milroy, superintendent of the Cumberland road in the State of Indiana, east of Indianapolis, for the construction of the bridge abutments over the east branch of White water, at Richmond, Indiana, for the particular terms and conditions of which he refers to the original written agreement on the files of this House; that before entering on the work the petitioner succeeded to all the rights of Rogers by purchase, and that the subsequent execution of the contract was carried on by, and its advantages enured to, him; that the contract was let after public advertisement by means of sealed proposals, the petitioner and Rogers being the successful bidders; but the wall by the contract having to be raised a considerable height above the river and the natural surface of the ground, it was a material element in the price as to the convenience of getting the stone on to the wall and handling them during the progress of the erection, and that this was specially provided for in the advertisement of the letting by a written notice given by Milroy, the superintendent, subjoined to the advertisement, that the filling in behind the abutments, and raising the road embankments from the river bluff, should be carried on and kept up even pace with the erection of the abutments.

The petitioner states that this was a very important condition, for it enabled him, if complied with, to haul all his stone and other materials by his own teams continually through the whole work, without rehandling from the river bluffs where they were obtained, to the very spot on the abutments where they were to be used, and that it gave also the great advantage of a plenty of room for the workmen, tools, and materials, instead of having them heaped up inconveniently on the walls and requiring the men to descend frequently, occasioning delays and interruptions to all the hands to pick out and raise the most suitable stone to go into the wall.

In order to verify the importance of this feature of the contract, the

petition refers to a subsequent agreement entered into between the United States and himself, June 18, 1834, for increasing the elevation of the abutment and wings, and which agreement is among the papers referred in this case, in which, on account of omitting, only, the stipulation in regard to filling-in behind the abutment, and without any other change in the terms, the price per perch was increased from $4 25 to $6.

The draft of the agreement on file, the petitioner states, was made by General Milroy, the superintendent, in his absence, and without his knowledge, and was then presented to him for signature. The petitioner observed the omission of this condition in regard to filling in behind the abutments. General Milroy then acceded to it, that it was omitted, and when the petitioner hesitated about signing it, in consequence of the omission, General Milroy replied that he was then in a hurry, but that he would supply it afterward, and that the condition should be kept. The petitioner states that he then signed the article on these assurances.

The petitioner, however, insists that the written advertisement of the superintendent, and the written bid then accepted, formed a written agreement that gained no new validity or force from being afterwards amplified into the original article on file.

The petitioner states, that under his contract he laid eighteen hundred perches of stone masonry, during the season of 1833; but in consequence of the prevalence of cholera, by frequent deaths and general alarm among his men, the progress of the work was entirely suspended at times, and its completion then prevented, though he continued present, encouraging and aiding it, at much hazard, and at great sacrifices; but, on account of his energy and good conduct, notwithstanding the delay in its execution for the reasons named, and, although the article contained a clause which enabled the superintendent to declare the contract abandoned, the superintendent did not avail himself of it; but, by express agreement, left the contract operative and of full effect, in every respect, except the time of its completion, until it was superseded by the agreement of June 18, 1834.

This subsequent agreement resulted in consequence of the difficulty of cutting down the river bluffs, from the necessity then first made known of increasing the elevation of the abutments and walls about seven feet higher than was contemplated in the original agreement, and to accomplish which it was first made necessary that some portion of the masonry already laid up should be taken down, that it might afterward be laid up more solidly. To do this before the completion of the first work, the superintendent directed, as it was his privilege to do under his first contract, a cessation of the work, and, by his direction, it continued to be suspended until the contract of June 18, 1834, was (about the 10th day of July afterwards) approved at Washington. Everything under the second contract just now alluded to has been satisfactorily adjusted.

Under the first contract the petitioner alleges the entire failure on the part of the United States to keep up the road, grade and fill in behind the abutments, according to the advertised terms; so that, instead of hauling the stone from the bluffs directly to the abutments,

and to the hands of the masons, by his own teams, and without rehandling, he was compelled, as the most practicable and expedient method, to haul them to the river at two points, each about fifteen rods from the abutments, load them into flat-boats he was compelled to construct for the purpose, float them to the abutments, and then, by means of cranes he had built, raise them on the work. This occasioned the crowding of workmen, tools, mortar, and materials on the walls in such confusion as to impede the work, besides requiring the use of extra hands at boating and at the cranes. He claims that this compelled him to the additional expense of a dollar per perch for masonry. The cost of the cranes and boats is stated at the additional sum of three hundred dollars. The entire quantity of masonry under this contract is stated at 2,478 perches, of which 1,478 perches were laid above the natural surface of the ground.

Upon General Milroy being succeeded in the superintendency by Captain C. A. Ogden, though information of this stipulation was particularly communicated to him by General Milroy, as a part of the contract, Captain Ogden declined making the compensation, for the reason only that the written article was silent in regard to it.

The petitioner further states that at the time of the suspension of his work, he had connected with the work fifteen workmen and four yoke of oxen he was compelled to keep, in order to be able to resume work when required, according to the condition of the first agreement. These were unemployed six weeks before the second agreement, at a higher price, was entered into, superseding it. He retained his workmen during this period without wages, but by paying their board, amounting to $112. The keeping his cattle, at the same time, without any charge for work, is stated at $48.

The petitioner makes the following summary of the further compensation he deems himself entitled to.

1,478 perches of stone masonry, at $1	$1,478 00
Constructing cranes and flat	300 00
Boarding fifteen hands	112 00
Expense of teams	48 00
His own time and expenses	105 00
	2,043 00

He states that he has been a practical stone mason for thirty-five years; took the job with an experience of what such work was, and with a correct judgment of what work of that character was remunerative; worked practically on it for two years; managed it with all practicable prudence and economy; expended on it $1,200 of his own money and was left in debt. Failing to obtain estimates at the time, he was referred to the consideration of Congress. The petition is verified by the affidavit of the petitioner.

The above statement the committee believe contains a correct recital in substance of the matters of the petition.

This petition was first presented to Congress on the 1st of March, 1836, was then referred to this committee, and has been before it since

almost uninterruptedly on subsequent references. An adverse report was made on it, January 22, 1839, adopting the argument and conclusions of that report twice since. In the meantime other proofs have been added, obviating or mitigating the objections at that time taken.

It is proper at this time to remark, that of all the proofs offered to this committee, which is now large, there is none that opposes the statement of the petitioner. There is, too, that singular coherence and consistency of the proofs that implies candor and veracity on the part of all the witnesses. The duty of the committee is then limited to the inquiry whether the case of the petitioner is supported by the evidence presented by him. The original agreement between Sayre and the government, to which the committee has made reference, contains no requirement on the part of the government to fill in behind the abutments and to keep up the grade as the masonry proceeded. But it is plain that the cost of the erection of bridge abutments and wings of great height, built of finished stone of great weight and size, very much depends on the convenience of getting the materials to the very spot where they are to be used, and afterwards in the convenience of using them there; and that if they were required to be raised by machinery, and handled on the narrow top of the walls, the cost would greatly exceed that of hauling and delivering them as the wall continued to rise, at an ample spot for handling and selection to the very hands of the mason. Did the government agree to fill behind the abutments, and maintain the grade, so that Sayre could deliver and handle the materials on the spot for using them as the wall went up?

Referring to the original agreement it is found that Sayre contracted "to fill up with earth around the exterior face of the abutments and wing grades as high as the natural surface of the ground." If the filling up was to be done during the progress of the work, it was *not* to be done by Sayre, because, by his contract, his engagement is thus limited to filling up as high as the natural surface of the ground.

On referring to the original agreement of Hill, Owen, Hunt & Co., who were the grade contractors of the section of which the bridge was a part, and had the contract to do the earth embankment of that section, the following stipulation is found: "It is also agreed by and between the parties aforesaid that the contractor for the masonry of the bridge aforesaid, (Sayre,) as also the contractor of the superstructure of said bridge, each respectively shall and may, at all times during the progress of their respective contracts, transport materials for the construction of said bridge, without interruption, along any part of the road levelled by the contractors to the place where such materials may be required for use." Thus it will be seen that the government then contemplated that Sayre was to transport his materials to the place required for use, along a road levelled by the grade contractors, and gave its purpose so much importance as to have it embraced in the written contract of the grade contractors. This provision could only be of use to Sayre, and as it exists, has too much consideration and form to be treated as a mere benevolent purpose of the government, but may more reasonably be referred to the fact of a coexisting obligation on the part of the government with Sayre to have it done. This

shows what the government intended as the basis of its letting of the contract for the masonry, that the grade should be made and the filling up done as the work of the masons proceeded. What kind of letting was made, and what were its purpose and extent, are best shown by the statements of the witnesses.

For the purpose of giving further information, and for complete accuracy, the committee has subjoined to this report the testimony of the principal witnesses at large. In this connexion, they direct attention particularly to the answers to the 4th interrogatory of the first deposition (marked B) of General Milroy, superintendent; to the answers of the 2d, 3d, 5th, 6th and 7th questions of his second deposition, (marked C;) to the letter of John Frazer, United States engineer, and witness to the original contract, (marked D;) to the deposition of Harvey Lesner, inspector of masonry on the part of the United States, (marked E;) to the statement of Captain C. A. Ogden, (marked F;) to the deposition of John Erwin, a bidder at the letting, (marked G;) and to the depositions of Alexander Stokes and Abner Hunt, (marked H.)

There are other statements of these and other witnesses in corroboration of the statements already quoted, of which it is not deemed necessary to take more particular notice. From what has been referred to, it seems that the written public advertisement of the letting of this work, under the contract of the government, contained a specification that the grading and filling behind the abutments was to proceed as the masonry was raised, and at the contractor's convenience; that its object was to give facilities to the contractors, and to cheapen the work to the government; that it was done that contractors might regulate their bids accordingly, and that Sayre's bid was tendered and accepted on that condition, and that it was an element of the contract and cost as material as quarrying of the stone.

Its omission from the agreement, afterwards amplified into what we have called the original contract of the parties, is satisfactorily explained, with an agreement of the parties at this time that it should stand as a part of the contract; that it should afterwards be supplied into it, and that there should be an observance of the condition. All the subsequent work, by the supposition of the contractors and superintendent, was under the idea of its being in force; nor was it ever questioned until about the time this contract was superseded by the contract of June 18, 1834, for raising the abutments to a greater height. On this supposition Sayre frequently complained that this condition was not kept; and Milroy, on the same supposition, made unsuccessful efforts to have it complied with.

The committee thinks that there was, in the absence of this contract, already binding, a contract between the parties. The making of the written advertisement of the letting, and the subsequent acceptance of Sayre's written bid, was a complete written agreement between the parties. It was already valid and obligatory as such on both parties. Without any other agreement being written, if Sayre had refused to comply with his bid, the government could have sued him and obtained a judgment; and if, in that condition, it would have been binding on Sayre, it was at the same time binding on the government, as every contract has a mutuality of obligation.

The committee, therefore, find a complete written agreement of the parties, one of the terms of which required the government to fill in behind the abutments as the work proceeded. It does not feel called on to inquire what is the effect of its omission in the amplified agreement, holding that even there its terms may be supplied by the written advertisement, as in a court of law a memorandum of parties for a conveyance of real estate may be resorted to afterwards, when an omission is found to have occurred in filling up the deed, to show what was the agreement of the parties. This would be the governing principle in this case, if we allowed ourselves to be reached by the frigid rule of law, instead of being controlled by the broader and superior sense of equity.

There is a concurrence of the witnesses that the grading and filling up behind the abutments was not done so as to be of any service during the progress of the work, and that it was at length forbidden on Captain Ogden's succeeding to the superintendency.

The original contract provided for the completion of the work by the last day of July, 1833. During that season 1,800 perches of masonry were laid, and by the consent and encouragement and under the personal superintendence of General Milroy, the government's agent, it was continued until about the 25th day of May of the next year. Its completion within the time limited seems to have been prevented by the prevalence of the cholera, which prevented keeping workmen at employment, an unexpected difficulty in getting suitable materials, and the omission to keep up the grade to the masonry, requiring, then, other means to be provided to get the materials to the ground. No neglect is imputed to Sayre. On the other hand, General Milroy commends his enterprise and fidelity at the work. What is the effect of his failure to execute the work at the limited time?

If Sayre was prevented from executing his contract in time, from the fault of the superintendent in not keeping an agreement necessary to its progress, then Sayre stands excused for his failure, and is only required to proceed with reasonable diligence afterwards to do his work as the means are provided. But, on the supposition that the government was not in fault, that the work was not completed in the time limited, but that, by common consent, both parties, afterwards, proceeded to its execution, then the committee regards the settled rule of reason and law to be, that the contract subsists in every respect, except as to the single thing of the time of its performance, and in regard to that, the party bound to do the work is required to proceed with reasonable diligence to its execution. It is not, then, the standing privilege of either party, at any moment, to terminate the contract and avoid the obligations of its terms. In cases of law where performance is not complete in the specified time, but where it has been afterwards completed, with the consent and knowledge of both parties, the recovery is sought and obtained on the contract, alleging that the performance was to be done in a reasonable time. In this view of the case the progress of the work, after the time for the completion of it had expired, having been under the express authority and sanction of the government superintendent, the whole contract is

regarded as subsisting up to the time of its being superseded by the contract of June 18, 1834.

Great liberality has always been permitted in regard to the time of fulfilment of contracts on public works, in consideration of the singular conditions under which such work is done, and from the usual, frequent alterations, such as seem to have occurred on this job. A reference to the original contract between the present parties shows that modifications of the form and structure were at all times competent to be made by the superintendent, thus, notwithstanding the contract, leaving it wholly in him to determine the time of its completion; indeed, giving the superintendent the power of defeating its completion, if he saw fit to make capricious alterations about the time limited for its performance.

A like reference, too, shows that the time of its completion was of inconsiderable importance, as one of the stipulations gave him the privilege of declaring the contract abandoned at any time "when the work was not carried on to his entire satisfaction," which stipulation gave the government more power over the contractor, and enabled it better to hasten its completion, than to have its completion limited to a given time.

In this case, Milroy, the superintendent, did not abandon the petitioner's contract. On the contrary, he extended it by an express verbal agreement, as is shown in his testimony, and its subsequent prosecution, and the drawing of estimates were governed by its terms. The reason for the extension is stated by Milroy, in his answer to the tenth question of his second deposition.

It cannot be deemed equitable, after the government has availed itself of the obligations of his contract, that the petitioner should be denied its corresponding benefits.

It is believed, however, that another feature of the case, notwithstanding the time fixed for its performance had expired, leaves no doubt that this contract was a legal subsisting one up to the time of its being superseded. This is the contract of June 18, 1834, entered into between the same parties, for the elevation of the walls six and six-tenths feet higher than contemplated in the original agreement, and which contains the following recital: "Whereas it is necessary, in the opinion of the aforesaid John Milroy, that the walls of the bridge over the east branch of White Water, on section sixty-seven of the road, should be raised six feet and six-tenths of a foot higher than the original plan for said abutments contemplated, and the wooden scewbacks now being in the walls, and the said walls nearly ready for the superstructure, it becomes necessary," &c. This recital is a written recognition of the continuance of the contract up to that time, and estops its denial.

These several considerations are important as determining the question, whether the first contract was one continuing to operate up to the time of the ratification of the contract of June 18, 1834? For, if so, the notice given by Superintendent Milroy to Sayre in May, 1834, to cease work, was competent by the terms of the first contract. But as it was also competent for him, under the same contract, to require a resumption of work by Sayre, at any moment, Sayre was thus com-

pelled to keep his hands and teams in readiness for it, and is entitled to compensation.

With these conclusions, viz: that the contract of the parties required, on the part of the government, the grading and filling in behind the abutments as the masonry was put up, and that the direction to suspend work in May, 1834, involved expenses for which Sayre is entitled to indemnification, it remains only to allude to proofs that refer to the subject of compensation.

The quantity of stone masonry built above the natural surface of the ground under the first contract was 1,478 perches. The contract price was $4 25 per perch. But under the second contract, by which the filling in behind the abutments was abandoned, and which is the only substantial respect in which there was any difference in the two contracts, the price was increased to six dollars per perch. Abner Hunt states the increased expense in erecting the abutments above the natural surface of the ground, in consequence of the failure of the superintendent to fill in behind the abutments with earth, as the masonry proceeded, at one dollar per perch. John Erwin, inspector of masonry, states the same at sixty-two and a half cents per perch, though from the connexion of the statement this is presumed to be intended as embracing the laying of the stone only, by means of machinery, and not to include the expense of machinery and boat, and the extra hands engaged in boating the materials to the abutments. General Milroy states the same increased expense at between one-half and one-third of the price, or from $1 41 to $2 12 per perch, or at an average of $1 77 per perch. But this, it is believed by the committee, was intended to cover the cost of machinery, flat, extra hands, &c. At this estimate, the entire increased expense is stated at $2,616 06. The committee has preferred to adopt the rate of one dollar per perch.

The suspension of the work continued for a period exceeding six weeks. There is proof of the payment of wages to but a single one of the hands who remained out of employment. But the names of fifteen persons are given who remained and were boarded by Sayre, and the testimony of Stokes is distinct, that Sayre paid their boarding, amounting to $112. He paid $48 also for keeping his cattle during this suspension, no charge being made in consequence of their being out of employment. Sayre's own service, being at the same time the contractor and superior workman on the job, is stated by several witnesses at $2 50 per diem. The amount justly thought due is thus a matter of arithmetical figures.

No attention has been given here to the condition of the account under the second contract, a satisfactory settlement of it having been made at the time.

The committee has given this case a more deliberate notice, in consideration of the character of the case, and from much respect to the action of previous committees. And it is but just in this connexion to say, that adverse opinions heretofore might have been obviated by bringing forward then that full proof that is before the committee now; but it seems to the committee a claim of honest merit, long postponed, and it asks leave to bring in a bill.

A.

Agreement of John Milroy, superintendent, and Benjamin Sayre, dated June 18, 1834.

Memorandum.—It is agreed by and between John Milroy, superintendent of the eastern division of the Cumberland road, in Indiana, of the one part, on and in behalf of the United States, and Benjamin Sayre, on the other part: whereas it is necessary, in the opinion of the aforesaid John Milroy, that the walls of the bridge over the east branch of White Water, on section 67 of the road, should be raised six feet and six-tenths of a foot higher than the original plan for said abutments contemplated, and the wooden skew-backs now being in the walls, and the said walls nearly ready for the reception of the superstructure, it becomes necessary by this increased height of the said walls that a portion of said walls be taken down and rebuilt. Now, this agreement witnesseth, that the said John Milroy does agree to pay the said Benjamin Sayre the sum of one dollar and twelve-and-a-half cents per perch of stone so taken down respectively; also, he, the said John Milroy, does agree to pay to the said Benjamin Sayre the sum of one dollar and twelve-and-a-half cents for each respective perch of stone so relaid. Also, it is agreed by and between the parties aforesaid, that he, the said Benjamin Sayre, is to receive the sum of six dollars for each and every perch of stone which the aforesaid walls may contain over and above the amount of stone embraced in the original plan of the said abutments. The perch of stone to consist of twenty-five cubic feet. Also, it is agreed by and between the parties aforesaid, that he, the said Benjamin Sayre, does hereby obligate himself to put up said wall so as to receive the superstructure by the 15th day of August next ensuing. As witness our hands this 18th day of June, anno Domini 1834.

JOHN MILROY. [L. S.]
BENJAMIN SAYRE. [L. S.]

Witness present, JOHN FRAZER.

B.

First deposition of General John Milroy, superintendent.

I, John Milroy, formerly superintendent of the eastern division of the Cumberland road, in answer to the following interrogatories or questions, which are as follows, on oath, give the following to each as herein stated:

Question 1. Were you the United States agent and superintendent of the eastern division of the Cumberland road at the time the stone masonry for the bridge over White Water river, on the said Cumberland road at Richmond, Wayne county, Indiana, was let and put under contract?

Answer. I was.

Question 2. Will you state in what way you managed said letting?

Answer. I caused general specifications to be posted up in the most public places for the benefit and government of bidders, setting forth the manner and form of the construction of the work, and which specifications were intended to be copied into the contract as a special condition of the same.

Question 3. Was there anything specified in the general specifications for filling up in the rear of the abutments with earth for the purpose of making the masonry less expensive to the contractor, and saving to the government?

Answer. In the first specifications set up there was not.

Question 4. Will you state whether there was, or was not, such specifications as above alluded to, and all the circumstances attending it, and the reason why it was not in the general specification?

Answer. The work was all laid off with plans and general specifications, made out sometime before the letting. Previous to the letting, it was suggested, that as it would be the business of the grading contractors to fill up the abutments to complete the sections, that it might as well be done as the masonry progressed, and would greatly facilitate the work, as the abutment had to be raised to so great a height that the stone being large might be hauled with teams on stone drags immediately along the sides of the walls, or where needed, and laid in the work without the expense of machinery and a number of extra hands, which would otherwise be necessary. Therefore, previous to the letting, (I) caused extra notice to be given or posted up that the earth should be filled in the rear of the abutments above alluded to, as the work progressed, at the expense of the government, for the purpose of saving great outlay and expense to the contractor, that the bids might be governed accordingly.

This is the substance of the specification alluded to, and had no reference to any other work to be let at that time; for this reason, that the abutments of that work were to be raised very high, and the rest was low, and the cost of the work could not be effected by such, to any amount worth noticing; therefore, was confined to that work alone, and not being among the general specifications, in filling up the contract, the clerk neglected to incorporate it therein; but filled up, as relates to general specifications, as in the rest of the contracts, and not as to that particular clause. But the whole transaction being done in good faith, had I remained as superintendent until the completion of the work, I should have felt myself bound to have made an allowance equivalent to the extra expense incurred.

I will further state, that if Samuel C. Duncan, the first contractor for grading that section had not failed on or about the time the work was ready to receive the earth, or filling, it would have been done according to the instructions he received, it is presumed, and so (I) thought until he abandoned his contract.

Question 5. Is there a copy of the above specifications alluded to in your possession?

Answer. Search has been made for the same, and neither that nor

any other copy of any specification of work under my superintendence can be found.

The foregoing is a true answer to all your questions, to the best of my knowledge.

JOHN MILROY.

STATE OF INDIANA, *Hancock county, ss.*

Personally appeared before me, the undersigned, a justice of the peace in and for the county of Hancock, John Milroy, who deposeth and saith, that the answers given to the foregoing questions are true, to the best of his knowledge. Sworn according to law.

Given under my hand and seal the eighth day of April, A. D. 1846.

WILLIAM SEBASTIAN. [L. S.]

STATE OF INDIANA, *Hancock county, ss.*

I, John Hager, clerk of the Hancock circuit court, do hereby certify that William Sebastian, esq., before whom the above acknowledgment seems to have been taken, was, at the time of taking the same, an acting justice of the peace, within and for said county, duly elected, commissioned, and qualified, and that full faith and credit is due and to be given to all his official acts as such.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at my office in Greenfield this [L. S.] 15th day of April, A. D. 1846.

JOHN HAGER, *Clerk.*

C.

Second deposition of General John Milroy, superintendent.

STATE OF INDIANA, *Hancock county, ss.*

Deposition of General John Milroy, taken at Greenfield, in said county, before John Rariden, on the part of Benjamin Sayre and Ezra Rogers, petitioners to Congress for pay for services rendered and losses sustained as contractors on the eastern division of the Cumberland road, under the authority of the United States, in the State of Indiana.

Question 1. Were you acting as superintendent of the eastern division of the Cumberland road in Indiana at the time the grading the hills and building the bridge at the east fork of White Water was let by authority of the government of the United States?

Answer. I was the superintendent of the said eastern division of the Cumberland road, and at that time held said appointment from the proper authorities of the government of the United States, and under that authority I advertised, sold out, and entered into contract

for certain grading, bridging, &c., on said road, among which contracts entered into was that entered into by Benjamin Sayre and Ezra Rogers, for building abutments, as above stated.

Question 2. Did you not, at that letting, give notice, by posting up in writing, over your own signature, at the time and place of said letting, that the earth should be filled in the rear of the abutments as fast as the stone work should be raised by the government, for the purpose of inducing contractors to make lower bids than they otherwise would do if the work was required to be raised without filling?

Answer. The work to be let was by a printed advertisement, to which my name was prefixed as superintendent; the work and manner of performing it, as far as was practicable in such a notice, with reference to profiles prepared by my engineer, and exhibited to the inspection of all who wished to examine, with specifications of the manner in which the work was to be done. Among the specifications on that work, was, that the earth should be filled in as the abutments advanced, and the contracts made with those persons who contracted for the grading of the hills were bound by contract to fill up as the abutments advanced; but as the contractors for the grading failed in the fulfilment of their agreements, they abandoned their contracts; the cutting down of the hills proved so much harder and more difficult than could be anticipated by the best judges of such work, it was impossible to get the filling of the earth as the abutments advanced, agreeable to the specifications and fair understanding at the time of entering into contract with Benjamin Sayre and Ezra Rogers, as the grading contracts changed hands, if I recollect, one or more times before it was completed.

Question 3. Did you not let the stone work of said bridge to Benjamin Sayre and Ezra Rogers with the above understanding?

Answer. I did.

Question 4. Was the above condition complied with on the part of the government, as was stated in your specifications for filling in the rear of the abutments?

Answer. It was not; as above explained in answer to question 2.

Question 5. Why were not the above conditions inserted in the contract for building said abntments?

Answer. A full description of all the items in such contracts were but seldom entered at length. In the articles the specifications were set forth with a profile with which the contractor was mostly furnished, and a copy of the same retained in the engineer's office. Whether that was the case in this instance I do not remember. I do distinctly remember that it was fairly understood by all the bidders, or such as choose to inform themselves, that the earth was to be filled in as the abutments were to be raised, and that failure was occasioned by the failure of contractors for the cutting down or grading the hills. The first undertakers broke up; new contracts and lettings had to be had, &c.; the first lettings for the grading being somewhere between eight and twelve cents per cubic yard; the last was seventy or eighty cents per cubic yard, the precise sum not recollected. Such being the case, it was impossible for the agents of the government to comply with the conditions on their part.

Question 6. At the time of signing the contract did you not say to

Mr. Sayre that the contract was already written in the absence of Sayre, and that you were anxious to forward them on to the department by the next mail, which was about to start, since, if they were to be written over again it would cause considerable delay, and that the dirt should be filled in according to the above specification in the same manner as if it had been filled in the written contract?

Answer. I recollect that Mr. Sayre hesitated about signing the article or contract, but I do not now recollect what his reasons were, or what was said at the time.

Question 7. Did not said Sayre sign the written agreement on the condition that the above parol agreement should be complied with on the part of the government?

Answer. He did.

Question 8. Did you at any time. whilst you were acting as superintendent, declare the contract abandoned for not having it completed within the time specified in said contract?

Answer. I did not.

Question 9. Did you not extend the time for performing the contract, with the understanding that it should be prosecuted as fast as possible?

Answer. I did verbally extend the time—not fixing any time, but that he was to proceed as fast as he could.

Question 10. Why did you extend the time?

Answer. Because part of the work was delayed on account of the earth not being filled in in the back of the abutments, as agreed on, agreeable to the specifications; and, furthermore, I did believe that the work would not be executed as well by any other person without a much higher price than what he was to get as per contract.

Question 11. During the prosecution of said work did you not order said Sayre to stop further proceedings until you could make a survey and estimate of the grading of the banks of the river, to determine whether the cutting should be lighter and the bridge raised higher than was first contracted for, which would save several thousand dollars to the government?

Answer. I did.

Question 12. Did said Benjamin Sayre comply with the order?

Answer. He did.

Question 13. How long was the work suspended?

Answer. I do not remember; but long enough to make the survey and estimate, to forward the same to the Engineer's Department at Washington and receive their answer, when a new contract was entered into, and further delayed to (till) that contract was approved at Washington.

Question 14. At the time the work was suspended for the purpose of making the survey and estimate, were not the abutments nearly completed on the first contract?

Answer. They were.

Question 15. Did you not make a second contract with said Benjamin Sayre for raising the abutments higher?

Answer. I did.

Question 16. Was it not the understanding that the abutments filled, as before stated, with earth in (the) rear?

Answer. I do not recollect whether it was the understanding under the new contract or not, but think it was.

Question 17. About the time the said Benjamin Sayre had fairly commenced the second contract, did not Captain C. A. Ogden, of the United States Corps of Engineers, succeed you as superintendent?

Answer. Benjamin Sayre had commenced on his second contract, but how long or what progress he had made when C. A Ogden superseded me as superintendent of the Cumberland road I do not know.

Question 18. Did not Captain Ogden order that the abutments should be completed under the second contract without filling in the abutments as agreed by you, and was not the filling stopped by his orders?

Answer. This question I cannot answer, as I know but little of his orders or proceedings about that work.

Question 19. How much do you consider the damage to be on each perch in consequence of not having the earth filled in rear of the abutments, as was the agreement under the first contract? under the second contract?

Answer. At this time, I cannot say what the damage on each perch could be, as I have no means of making any accurate calculation, but the damage must have been great. Mr. Sayre was under the necessity of erecting cranes, and frequent alterations with the necessary machinery, also, to supply many more hands than he would otherwise have had, had the earth been filled in the rear of the abutments. It also caused scaffolding that otherwise would not have been needed. I can only give a rough guess, but do think, after machinery became necessary to hoist the stone, (some of them in large blocks, and others small,) that it would enhance the price of the work from one third to one half. From my knowledge of that work, were I now to undertake such, I surely would make at least that difference or more.

Question 20. Was the dirt filled in the rear of the abutment according to either contract, so as to be of any service in raising the stone work?

Answer. I do not distinctly remember what the second contract was, or what was said about the filling in. I recollect going to the contractors who had the fill to make, and asking them to make said fills, but think they were not filled out. If my recollection serves me, I understood that Captain Ogden caused the filling to be discontinued (until) the abutments were finished, though I did not hear Captain Ogden say anything about it that I recollect.

Question 21. What was the actual loss of time and expense occasioned by the suspension of the first contract?

Answer. I cannot state the actual time, but, from the necessary correspondence from the time of suspending to the time of commencing, (or that he might have commenced,) there could not have been less than six weeks, or within two or three days under or over that time. What the expenses were I cannot now tell. He had a large number of hands, mason attendants, quarriers, and stone dressers, all of which must, of necessity, be suspended from their several occupations, unless otherwise employed, with teams and teamsters, &c., the cost of which I have no means of ascertaining.

Question 22. Previous to the second contract was it required to send the written agreement to Washington for the approval of the government before commencing the work?

Answer. It was agreeable to the instructions given me by the Engineer Department; all agreements and contracts were required to be forwarded to the department for their approval. This contract was an important one. It was indispensably necessary. They might have annulled said contract if they had not considered it for the best interest of the government, and myself made liable for damages.

Question. Was the said Benjamin Sayre, at the time of making the second contract, aware that it was necessary to send it to Washington for the approval of the government before commencing?

Answer. He was not to (until) after the contract was signed, and insisted on proceeding to commence immediately. He complained of much loss, &c.

Question. Did not the said Benjamin Sayre demand of you that the dirt be filled in according to the first parol agreement under the first contract?

Answer. He did frequently.

Question. Please to state whether you would have considered yourself bound, as a superintendent, to have made an allowance on the part of the government for not complying with the specifications and express understanding of filling the abutments, as has been stated in the deposition, and the reason you did not?

Answer. I did consider that I would have been bound to make him an allowance on the part of the government for not complying with the specifications; and the reason why I did not, I was superseded as superintendent of the road, when all my power ceased, and was assumed by Captain Ogden.

JOHN MILROY.

STATE OF INDIANA, *Hancock county, ss:*

Be it remembered, that on the 8th day of April, 1844, personally appeared before me, John Rariden, an acting justice of the peace in and for said county, John Milroy, who, being by me duly sworn upon his oath saith that the matters and things contained in the foregoing deposition are substantially true, in matter and fact, as he verily believes.

Given under my hand and seal this 8th day of April, 1844.

JOHN RARIDEN, [L. S.]
Justice of the Peace.

STATE OF INDIANA, *Hancock county, ss.*

I, John Hager, clerk of the Hancock circuit court, do hereby certify, that John Rariden, esq., whose name appears to the above certificate, was at the time of signing the same, and still is, an acting justice of the peace within and for the county of Hancock aforesaid, duly elected,

commissioned, and qualified, and that full faith and credit are due to all official acts as such.

Witness my hand, and the seal of said court, hereunto affixed, at [L. S.] my office, in Greenfield, this 9th day of April, 1844.

JOHN HAGER, *Clerk.*

D.

Letter of John Frazer, United States Engineer, to Benjamin Sayre.

PAOLI, ORANGE COUNTY, INDIANA,
December 17, 1838.

SIR: In answer to inquiry in reference to your contract for the construction of the bridge abutments at the east fork of the White Water, on the Cumberland road, in this State, I can safely say, that when the contract was awarded to you I was the engineer in charge of the eastern division of said road, in this State, and that it was intended and understood that the rear of the abutments should be kept filled with earth as the masonry progressed; and that we considered the grading contractor bound, at all times, when directed, to keep the abutments filled to such a height as might suit convenience. And, also, that when Captain Ogden assumed the superintendence of the road, that he directed that the abutments thereafter should be carried up without filling up in the rear until the said abutments were sufficiently dry to admit of it, which order was complied with. How much stone was laid when the order was issued I cannot say, nor can I say how long you continued to lay stone after said order was issued, but I can safely say that if the filling had been kept up to suit your convenience that a saving of cost in the construction might have been effected.

I am, sir, your obedient servant,

JOHN FRAZER.

BENJAMIN SAYRE, Esq.

E.

Deposition of Harvey Lesner, inspector of masonry.

STATE OF INDIANA, *Henry county, ss.*

Be it remembered, that on the 8th day of April, 1844, personally appeared before me, the undersigned, an acting justice of the peace in and for the county of Henry, Harvey Lesner, who, being by me duly sworn, upon his oath deposeth and saith: That he is a stone cutter and stone layer by trade, and was employed as inspector of masonry by the United States on the east division of the Cumberland road, in Indiana, in the years 1833 and 1834, under General John Milroy, who was at that time the principal superintendent of the east division of

the Cumberland road in Indiana, about which time General Milroy let the stone work of the bridge at the east fork of White Water, in Wayne county, on the Cumberland road, to Benjamin Sayre and Ezra Rogers, with the understanding that the abutments should be filled in rear with the earth as fast as the stone work was laid up, to be done at the expense of the United States, which was not done until the work was completed. This arrangement was made in view of having the graders perform the filling of the abutments, and induce the bidders on the stone work to bid at less price per perch than they would if the work had to be carried up without filling, as the walls were nearly thirty feet in height, and required expensive machinery and a good many extra hands to raise the stone, as they were generally large; whereas, if the earth had been filled in the rear of the abutments, the stone could have been hauled immediately by the side of the walls, ready to lay, saving an expense of at least sixty-two cents for each perch laid in said walls. The said stone work was constructed by said Benjamin Sayre in a very substantial and superior style. This deponent further saith, that the stone suitable for the work was more expensive and difficult to procure than was first anticipated. This, together with the cholera, which was raging to an alarming extent, made it impossible to complete the work within the specified time, and the superintendent, General Milroy, extended the time, and never declared the contract abandoned, to my knowledge; and about the time the walls were nearly completed to receive the superstructure, the said Sayre was ordered to suspend operations until a survey could be made of the banks of the river, with a view to make the cut in the banks less, and the bridge higher, supposing it would save a large expense by such change, which hindered said Sayre and his hands and teams for some weeks, but how long precisely, or to what damage, I cannot say, but it must have been considerable. And further saith not.

HARVEY LESNER.

Subscribed and sworn to before me, the undersigned, justice of the peace of said county, this 8th day of April, 1844.

MARBLE S. CAMRON, [L. S.]
Justice of the Peace.

F.

Statement of Captain C. A. Ogden, United States Engineer.

When Captain Ogden assumed the superintendence of the Cumberland road, in Indiana, in July, 1834, he found the abutments of the bridge over the White Water nearly completed, in conformity with a contract made on the 8th day of December, 1832.

The contractors for the grade on the east bank of the river had commenced filling in rear of the east abutment. This filling was objectionable—first, on account of the injury the masonry might sustain by being filled before the mortar was dry; and, secondly, it was

made of an incipient limestone that was found in the excavations. The embankment that had been thus made has since been taken down, and enough earth mixed with it to insure its stability. The superintendent was informed that it was a part of the contract with Sayre that the embankment should be made as fast as the masonry progressed, but as it was not so written, he did not feel authorized to compensate him (Sayre) for any damage he might sustain from a non-compliance with this agreement. The superintendent is not prepared to say how long the work was suspended. Sayre had commenced when he arrived in Indiana, March 18, 1836.

C. A. OGDEN.

G.

Deposition of John Erwin.

STATE OF INDIANA, *Wayne county, ss:*

Before me, James W. Green, a notary public duly appointed and qualified, personally appeared John Erwin, of said county, and after being by me duly affirmed, deposes and says: That he, the deponent, was one of the bidders for the construction of the bridge over the White Water river, on the east division of the Cumberland road, in Wayne county, and State of Indiana, near Richmond, some time, as the deponent believes, in the year 1832; and that one of the specifications which particularly governed the prices of construction, set forth that the earth should be filled in rear of the abutments and wings of said bridge as fast as the walls were raised, so that the stone could be hauled near the work, and thereby save a heavy expense, which would otherwise occur, provided the filling was not done as was *bona fide* the agreement. The deponent further says, that part of the specifications touching the filling in rear of the abutments was not done so as to be of any service to the contractor, Benjamin Sayre, during the completion of said bridge; and that he, the deponent, recollects of said contractor complaining, during the building of said bridge, that said earth was not filled in according to contract on the part of the United States; and has also since heard the engineer say that it was a part of the contract that the earth should have been filled in as aforesaid, and it ought to have been embraced in the contract, but that it was an omission or oversight. And further the deponent saith not.

JOHN ERWIN.

STATE OF INDIANA, *Wayne county, ss:*

Be it remembered, that on the 8th day of December, 1838, personally came before me, James W. Green, notary public, the within named John Erwin, of the county and State aforesaid, being of lawful age, when he was duly sworn by me to tell the truth, the whole truth, and nothing but the truth—said within deposition being writ-

ten by me and afterwards subscribed by said John Erwin, after being duly sworn as aforesaid.

In witness whereof, I have hereunto set my hand and notarial seal [L. S.] of office, this the 8th day of December, 1838.

JAMES W. GREEN, *Notary Public.*

H.

Depositions of witnesses, taken in a claim of Benjamin Sayre against the United States.

Alexander Stokes, of the borough of Richmond, county of Wayne, and State of Indiana, of lawful age, being first duly affirmed, deposes and says: That he was employed by Colonel Benjamin Sayre to keep his books, during the summer of 1834, whilst the said Sayre was constructing the abutments of the bridge over the east branch of the White Water river, on the eastern division of the Cumberland road, in the State of Indiana, which was then under the superintendence of General John Milroy. That this deponent recollects distinctly that said Milroy came to Richmond, and ordered Colonel Sayre to stop the work on the ground, as he then alleged, that it was not certain whether the bridge was to be raised higher or not, and he could not determine the question until he had sent to the War Department at Washington. But it has been so long since, that he cannot recollect the precise day on which the order was given and the work stopped. He, however, states positively that it did not vary a week from the twenty-fifth day of May, A. D. 1834; and to the best of his recollection the order from General Milroy for the recommencement of the work was given, and the work was again commenced, about the tenth day of July, 1834, though it may have been several days thereafter. He states, positively, that the work was suspended at least forty days by order of said Milroy. That said Sayre had employed at the time the work was suspended about thirty hands, among them were eight or ten stone cutters and masons, and six or seven laborers, which he wished to retain, as they were excellent hands, and he was expecting in a short time to recommence the work; and fearing that if they were once dispersed it would be extremely difficult to procure others, agreed with some of them to continue their wages, and with all of them to pay their board. That the following named persons accordingly did remain, and were boarded at his expense, viz: Newton Silsbee, Israel Smith, Samuel Sanders, John Black, Samuel Black, Smith Lane, John Sheppard, John Coogle, Francis Hiteman, George Fritz, Wyatt Saunders, John Reed, Samuel Little, and James McRay, and that their board, at that time, cost said Sayre, for each of them, one dollar and twenty-five cents per week. At the time the work was suspended as aforesaid, said Sayre had four yoke of oxen, which he used for hauling stone from the stone yard, adjoining the work, on to the abutments; and as said Sayre had previously contracted with other persons to deliver the stone from the quarry at the yard, he had no employment for his oxen,

and they were idle during the suspension of the work, which was, as stated before, at least forty days. That said Sayre was unemployed during the suspension of said work; and although this deponent is not particularly acquainted with the wages which a good mason and builder should receive, yet he would suppose that the charge which Colonel Sayre has made, of two dollars and fifty cents a day, is reasonable. That the men whose names are mentioned above were persons, the most of whom came to Richmond with said Sayre, when he took the contract on said bridge. And when General Milroy was superseded by Captain C. A. Ogden, the present superintendent, and the contract given up, the hands dispersed, and not one of the above-mentioned persons now reside in this vicinity, and the residence of nearly all of them is not known to this deponent. He therefore judges it would be extremely difficult to procure their testimony. And further saith not.

ALEXANDER STOKES.

STATE OF INDIANA, *Wayne county, ss:*

I, James W. Borden, a notary public, dwelling in the borough of Richmond, county of Wayne, and State of Indiana, duly appointed and qualified, and by the laws of said State authorized to administer oaths and affirmations, and take and receive depositions, &c., do hereby certify that the above named Alexander Stokes, after being by me duly affirmed, saith that the above deposition, to which he hath subscribed his name, is the truth, the whole truth, and nothing but the truth.

In testimony whereof, I have hereunto set my hand and notorial seal of office, to serve and avail as occasion shall or may require, this the 16th day of February, A. D. 1838. [L. S.]

JAMES W. BORDEN, *N. P.*

Benoni Newby, of the borough of Richmond, county of Wayne, and State of Indiana, of lawful age, and being first duly affirmed, deposes and says: That he was employed in hauling stone and other materials for the bridge over the east branch of the White Water river, on the eastern division of the Cumberland road, in Indiana, which was then under the superintendence of General John Milroy, from its commencement to its completion; and that this deponent distinctly recollects that Colonel Sayre was ordered by General Milroy to suspend the work sometime in May, 1834, (he, General Milroy, supposing, though not certain, that the bridge, and, consequently, the abutments, would be raised to save the expense of cutting down the hills on either side of the river, thereby saving to the United States several thousand dollars,) in order to save as much expense as possible in taking down the walls, to remove the timbers, (commonly called skewbacks,) which

were already placed in the walls, to receive the thrust and footing of the arch timbers, which would, of necessity, have to be raised as much higher as the walls were raised. At which time, as I understood, General Milroy wrote to the War Department at Washington, and in about three weeks orders came to raise the abutments higher, when a new contract was entered into between General Milroy and Colonel Sayre for raising the abutments about eight feet higher, which contract was sent to the War Department for approval, and returned to General Milroy at Greenfield, Indiana, with orders to proceed with the work; after which Colonel Sayre received orders to go on with the work, which was at least six weeks from the time the work was suspended. Said Newby also distinctly recollects that the abutments were nearly ready to receive the superstructure, and all the materials were contracted for to be delivered by Abner Hunt and Andrew Ferguson, and were nearly all delivered, to finish up the first contract, and in consequence of this, the said Sayre was idle himself, and his teams, during the time of the suspension as above stated; and also that the said Newby heard said Sayre make an offer to some of the masons and laborers to pay them a certain price and board them—the amount I do not recollect—rather than have them leave, as he expected to recommence as soon as returns could be received from Washington. The names of the men I cannot recollect, except the following, viz: Newton Silsbee, Israel Smith, Samuel Sanders, John Black, Samuel Black, Smith Lane, John Sheppard, John Coogle, Francis Hiteman, George Fritz, Wyatt Sanders, and two or three others that I cannot recollect. Some of these men were sometimes at work about in places for themselves, but were to have their board free until the work recommenced, and were actually boarded by said Sayre at his own expense. Said Newby also states that the common price of boarding was from one dollar and fifty to one dollar and seventy-five cents per week; and that it was worth two dollars per week to keep each yoke of oxen, as he was in the habit of keeping oxen for some of the contractors at that time, and that he could not afford to do it at a less price, as feed was scarce and difficult to procure that season. And the said Newby further states, that he believes two dollars and fifty cents per day, the amount charged by said Sayre for his lost time, is a reasonable charge. And further saith not.

BENONI NEWBY.

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STATE OF INDIANA, *Wayne county, ss:*

I, James W. Borden, a notary public, dwelling in the borough of Richmond, county of Wayne, and State of Indiana, duly appointed and qualified, and by the laws of said State authorized, to administer oaths and affirmations, and take and receive depositions, &c., do hereby certify that the abovenamed Benoni Newby, after being by me duly affirmed, saith that the above deposition, to which he has subscribed his name, is the truth, the whole truth, and nothing but the truth.

In testimony whereof, I have hereunto set my hand and notarial seal of office, to serve and avail as occasion may require, this the 16th day of February, A. D. 1838.

[L. S.]

JAMES W. BORDEN, *N. P.*

Abner Hunt, of the borough of Richmond, county of Wayne, and State of Indiana, of lawful age, being first duly affirmed, deposes and says: That he was a contractor on the east division of the Cumberland road, in the State of Indiana, and was one of the contractors named in the contract of Robert Hill, Benjamin Hill, William Owens, William Thistlethwait, and Abner Hunt, for the grading of that part of the Cumberland road connected by the bridge over the east branch of White Water; and I was also bound to Colonel Sayre to deliver the stone for the abutments of the aforesaid bridge, to the amount of 1,000 perches, and that Andrew Ferguson was bound to furnish the balance of the stone to complete the first contract; and I also distinctly recollect that at the time the work was suspended by General Milroy, it was nearly ready to receive the superstructure, and that there was a sufficient quantity of stone delivered nearly to complete the first contract at the time of its suspension; and in consequence of this, the said Sayre and his teams were idle during the time, which was from some time in the latter part of May until about the first of July, 1834. And the said Hunt distinctly recollects that the said Sayre employed on the said abutments an average of thirty hands, and that when the work was suspended, had agreed to board the hands that would stay and be ready to commence as soon as he should receive orders from the suprintendent; during which suspension he boarded at his own expense, as they, the following persons, stated to me, to wit: Israel Smith, Newton Silsbee, John Black, Samuel Black, Smith Lane, John Sheppard, John Coogle, Francis Hiteman, John Reed, James McRay, George Fritz, Wyatt Sanders, Harmon Fisher, Samuel Sanders, and Samuel Little; the balance of the hands generally had families and returned home. Said Hunt also states that the common price of boarding at that time was from one dollar fifty to one dollar seventy-five (cents) per week; and that it was worth two dollars per week to keep each yoke of oxen, as the said Hunt had oxen of his own, and also kept those belonging to other contractors at that time; and that he could not afford to do it at less price, as feed was scarce and difficult to be procured that season.

Said Hunt further states that the said Sayre called on him and the company above named for grading said road, to fill up in rear of the abutments as fast as the walls were raised, which we supposed we were not bound to do, only as it suited our convenience; but eventually General Milroy came and ordered us positively to do so, stating to us that he was bound to have the walls embanked with earth in the rear as fast as the walls were raised, and that we, the said company, were bound to follow his instructions in the manner in which the embankment should be made; and we accordingly commenced the above re-

quirement, when about that time Captain C. A. Ogden arrived, which, I think, was some time in July, 1834, when he, Captain Ogden, ordered that the walls should be completed without filling with earth in the rear, in order that the walls should become as dry as possible before the earth was placed against them. Said Hunt further states that neither of the abutments were filled in the rear until after the superstructure was placed upon the abutments. Said Hunt further states that he is in the habit of building and handling stone, and that he would make a difference of one dollar per perch more at the above named abutments, than if it had been filled in the rear as fast as the walls were raised. Said Hunt further states that Israel Smith, the foreman of the work, told him that he, Smith, was paid for the time of the suspension of the work, or he would not have staid; and that, on account of not earning anything for said Sayre during the time the work was suspended, he made a small deduction, and that said Sayre paid him one dollar fifty per day, and boarded him at the same time; and the said Hunt further states that he believes two dollars and fifty cents per day, the amount charged by said Sayre for his lost time, is a reasonable charge. And further saith not.

ABNER HUNT.

STATE OF INDIANA, *Wayne county, ss.*

I, James W. Borden, a notary public, dwelling in the borough of Richmond, county of Wayne, and State of Indiana, duly appointed and qualified, and by the laws of this State authorized, to administer oaths and affirmations, and take and receive depositions, &c., do hereby certify that the above named Abner Hunt, after being duly affirmed by me, saith that the above deposition, to which he has subscribed his name, is the truth, the whole truth, and nothing but the truth.

In testimony whereof, I have hereunto set my hand and notarial seal of office, to serve and avail as occasion shall or may require, this the 16th day of February, A. D. 1838. [L. S.]

JAMES W. BORDEN,
Notary Public.

I.

Extract of a letter of General John Milroy to Hon. Elisha Whittlesey, chairman of the Committee of Claims, dated Greenfield, Indiana, February 23, 1838.

Captain Ogden superseded me some time near the latter end of July, 1834.

There was a contract made with Robert Hill and others for excavating the hills on each side of the bridge. Said Hill & Co. were to fill in the abutments as they were raised, by which means the abutments could be raised at a much less expense than if not filled in. The company did neglect for a time to make the fill required, and on

being informed of the same went to Richmond for the purpose of seeing them, after which they commenced the fill. I will further state, that such was the size of the stones to be employed, the manner of dressing them, and the extreme small quantity of mortar to be used in said work agreeable to contract and actually complied with, that filling in or backing up the abutments and walls with earth could not in any degree affect the work as to durability or otherwise, and absolutely advantageous to the workmen.

I would suppose the time he was forced to suspend work on account of the second contract may have been five or six weeks. After entering into the second contract he expressed a desire to go to work the next day, which I would not allow of until such time as it would be known whether the contract would be approved of or not, at which Mr. Sayre complained very much; said his hands would be all let idle, which I presume was the case; he had several teams of oxen, &c. I further know that it was a difficult matter to get hands to work at that place, on account of sickness, particularly cholera. I presume if he had dispersed his hands, it would have been difficult to have collected enough to have proceeded with his work without much loss of time.

You also ask if Mr. Sayre had no other work for his hands and teams from the time he made the new contract until he commenced, or did they disperse to their homes?

These are things I do not know. I know of no other work he had for them, and many of his hands were transient, and if dispersed would not return again. I do not recollect that any agreement was made for payment for suspension of the work, or the hands let idle. He did complain of the damage it would be to him, but no particular agreement was made. I always considered the United States bound by all means to make good to contractors any loss by delays or changes made in the work; but changes of superintendents or managers changes the character of things so that justice cannot at all times be done.

Captain Ogden ordered the wooden skewbacks to be dispensed with, and stone prepared to supply their place, at considerable expense to the contractor, but greatly improving the work, both in appearance and durability.

K.

Letter of General John Milroy to Benjamin Sayre.

GREENFIELD, *January* 31, 1835.

SIR: You wish me to state distinctly what was the understanding more than that contained or expressed in the article of contract, and how far any verbal contract was considered binding.

It has ever been an invariable rule with me, as superintendent of the Cumberland road in Indiana, in any verbal agreement with contractors, strictly to adhere and comply with and observe the fulfilment of any such verbal contract or agreement the same as if written.

t was distinctly understood at the time of entering into ar ticles h you for the construction of the abutments of the bridge at the t branch of White Water, section sixty-seven, eastern division of Cumberland road, that I was to cause the grading contractors to up the earth in the rear of the abutments as the work progressed, ıs to enable you to build the same at a much less expense than you ld do if such fill were not made, and did call on the grading con- :tors to fulfil that part of their contract with them, as well as with , which they had, in consequence of said call, commenced previous ny being superseded by Captain Ogden in the superintendency, &c. 'rom the very large blocks, and the size of the stones generally ›loyed in that structure, which was expressed in the contract, and ıally used in said abutments, with the manner of dressing * * , h the small quantity of mortar used it was then * * , (and ill believe,) that the filling in the rear of the abutments could not ıny sensible degree affect the durability of the structure. And had your first contract been changed, (which was done at my sugges- and request,) and much time lost, you could have completed your tract within the time specified. And further, after the first altera- , and previous to the arrival of Captain Ogden, your progress with work was such as led to the belief that you would have been able ıave completed your second contract agreeable to the stipulations, not Captain Ogden ordered other alterations to be made in the work; though the alterations ordered by Captain Ogden were of a judi- ıs kind, and much improved the beauty and durability of the work, ı have been the consequences, that you have suffered much loss in ı change; you have not been compensated in your labor, which eeable to justice you ought to be, as the work is executed in a man- and style inferior to none of the kind for beauty and durability, neatness of work generally.

Vhat amount of loss you have sustained from the sundry changes, in not having the abutments filled in the rear with earth as per- eement, I am not able to state; but from the statement you have ıibited, your charges seem to be reasonable.

presume that should the department not feel authorized to grant ı relief, that the justice of Congress will do you that justice that y not be in the power of the Engineer Department to render.

With much esteem, your obedient servant,

JOHN MILROY.

Colonel BENJAMIN SAYRE.

L.

Statement by Hon. D. P. Holloway.

Section sixty-seven of the Cumberland road, east of Indianapolis, :luded the bridge at Richmond, my place of residence.

Colonel Ben. Sayre was contractor for building the abutments of ; said bridge over White Water river. I was frequently present

during the progress of the work. The contractor prosecuted it with energy until the breaking out of the cholera in Richmond, which first occurred among the workmen on the road. The cholera prevailed to such an extent that the citizens generally were unable to continue their regular business. About ten or fifteen rods below the site of the bridge, there is a mill-dam, causing the water to back up the stream about the same distance above the bridge, perhaps further, making the water from four to five feet deep just below the dam, and about thirty rods above the bridge the stream is easily forded.

I heard frequent complaints by the contractor at the delay and inconvenience he was subject to, from the fact that the fill was not made as fast as the stone was laid up, requiring him to bring the stone in a boat and hoist the stone to the walls by cranes, the expense of erecting which, and the building of the boat, must have been from three to four hundred dollars. Had the fill been made simultaneously with the abutments, the stone might have been handed on wagons to the abutments.

From frequent conversations with Mr. Sayre, I learned that he expected additional compensation for the manner in which he was compelled to prosecute the work. He was an energetic, industrious man, and a good practical workman. The general belief in the community was, that Colonel Sayre lost money by the contract, not from any delinquency on his part, but from the neglect of the contractors to make the fill in time.

I have read the petition of Colonel Sayre, presented to the House of Representatives, and find the character of the ground and work correctly described.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 44.

WILLIAM G. RIDGELY AND HODGES AND LANSDALE, OR THEIR LEGAL REPRESENTATIVES.

[To accompany bill No. S. 278.]

JANUARY 9, 1857.

Mr. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 278, for the relief of William G. Ridgely and Hodges and Lansdale, or their legal representatives, with the papers accompanying, have had the same under consideration, and now report:

The petitioners, for whose relief the bill in question was framed, state that large quantities of tobacco belonging to them, and which were stored in the public warehouses at Nottingham, Benedict, Magruder's Ferry, Hunting Creek, and Lower Marlborough, were carried away or destroyed by the British forces during their invasion of Maryland, in the war of 1812, "in consequence of the military occupation by the American troops of the waters of the Patuxent, and in consequence of the use by the American troops of the tobacco and the warehouses as means of military defence and for attack on the British forces."

Your committee find no evidence among the papers before them as to the destruction of any tobacco at Hunting Creek and Lower Marlborough; but there are depositions among the papers submitted in these cases, or in the case of Christopher Neale, to which reference is made in the petition of William G. Ridgely, that tobacco was destroyed in 1814 at Cedar Point, Tracey's Landing, Nottingham, Benedict, and Magruder's Ferry. The depositions are very vague and indefinite as to the time when the occurrences spoken of in them happened, and as to the circumstances connected with those occurrences, which it would have been material to show before any liability for the tobacco destroyed could, in the opinion of your committee, attach to the government of the United States. These depositions may not all relate to the places where the petitioners say their tobacco was destroyed; but as that is possible, and it is quite probable that they do apply to the cases of other claimants, your committee will state its substance at this time, in order to avoid the necessity of repeating any of them in other reports.

First. As to tobacco destroyed at the warehouse at Cedar Point.

The only evidence in relation to this is that furnished by a copy of a letter from the Hon. D. Jenifer, dated February 27, 1832, filed with the papers of Messrs. Hodges and Lansdale. In that letter Mr. Jenifer states that "in the summer of 1814 some schooners of the enemy were anchored off the warehouse; that *some of the crews landed and were in the act of taking away some of the tobacco, when General Stewart, the commander of the troops in the vicinity, ordered them down, and commenced an attack with artillery* upon the enemy at the warehouse; that after firing several shots from the cannon, &c., the warehouse was set fire to by the enemy and leveled to the ground, with all the tobacco then in the house," &c.

Second. As to tobacco destroyed at the warehouse at Tracey's Landing.

It is stated that Commodore Barney put munitions of war in it, in the spring of 1814, to lighten his vessels, and that some were *left in, probably*, at the time it was destroyed. Patrick Henry O'Reilly testified, as appears from the report in the case of Matilda Drury, (29th Congress, 1st session, report No. 132, H. of R.) "that the removal of the tobacco out of the warehouse to a place of certain safety was suggested and discussed among the neighbors; that propositions were made to remove what belonged to them; and that some did remove theirs; but that by far the greater part was left." In October, 1814, the enemy, under Admiral Warren, appeared at Town Point. The militia were ordered there to prevent the enemy's landing; and they took tobacco to make breastworks, "barricades, and fortifications." They were then driven off, and the enemy destroyed the warehouse and the tobacco.

Third. As to tobacco carried away from the warehouse at Nottingham.

Commodore Barney, by letter dated on the 8th of June, 1814, requested that troops should be stationed there. The United States flotilla was then at anchor at Nottingham. The warehouses were not destroyed until long afterwards. When the enemy approached in their barges to attack the place, the officer in command says he ordered the militia to take the tobacco out of the warehouse and use it as a breastwork. From behind this tobacco they fired on the enemy, but were at last driven away. The enemy then took possession of the tobacco and carried it off.

Fourth. As to tobacco carried away or destroyed at Benedict.

It is stated that a body of United States troops were stationed at Benedict, in 1812, and that troops were, at various times, from early in the spring of 1814 up to a few days before the landing of the British at Benedict, stationed at various places on the Patuxent. One witness, Austin Cusick, said that in June, 1814, several hundred hogsheads of tobacco were in the warehouse at Benedict, and that *with a view to the protection of the property* in that village, Captain Carberry's company of the United States army was ordered there; that as a means of defence, and to give shelter to the men when the enemy opened their fire, Captain Carberry ordered his men to roll out the tobacco then in the warehouse, with a view to erecting batteries;

that a well-constructed fortification was made and was used as such by the regulars; and that when the enemy reached Benedict (whether it was abandoned by our troops, or was taken after a contest, is not stated) and discovered the uses to which the tobacco had been put, they rolled a part of it in the river to prevent its being so used again, and carried a large portion of it off. Another witness states that he repeatedly saw the British forces take tobacco from that warehouse on board of their boats; that he saw them burning and otherwise destroying tobacco in the town of Benedict; and that when they left Benedict not more than thirty hogsheads of tobacco remained in or about the warehouse.

It is unnecessary here to mention the circumstances attendant on the loss of tobacco at Magruder's Ferry, as they are detailed in the report heretofore made in the case of Rinaldo Johnson and Ann E. Johnson.

The slightest examination of the circumstances just referred to, connected with the loss of tobacco in the war of 1812, makes it certain that the places where the losses occurred were not occupied by the United States as military positions, or with a view to the general defence of the country. The property at the different points was considered insecure because of the depredations of the enemy, who did not respect private property, but wasted and destroyed it, or carried it off, wherever it was found by them without sufficient protection; and it was for the purpose of affording the protection required that the United States troops, or the militia in the service of the United States, were employed. The fact that they were employed did not in any way provoke the destruction or carrying off of the property actually lost; and it is abundantly evident that but for their employment much more property would have been destroyed.

The evidence gotten together is of a very extraordinary character. Its sole scope and design is to produce the impression that if no military efforts had been made in the section of country where this property was situated, the property would have been preserved to the owners. And this impression is attempted to be produced, by making the opinions expressed by the witnesses evidence to establish it, when the facts which they disclose, taken separately and disconnected from their own volunteered judgments, must satisfy every man who does not wish to be deceived, that all the various expeditions of the enemy which resulted in the loss or destruction of the property claimed for, were set on foot for the express purpose of capturing or destroying it; that the presence of the militia or of the regular troops did not in any way induce attacks upon property; but that, on the contrary, the fact that they were present at any particular point was the only thing that could give any prospect whatever for its being left in security. That is shown, in so many words, as to the property lost at Cedar Point. There the enemy was in possession of the place, and were engaged in carrying off the tobacco when they were attacked by the American forces; and the tobacco was destroyed, not because the American forces occupied the warehouse, but because they made an attempt to rescue the property after it had been captured by the enemy, attacked the British who were *in possession of it*, and hindered them from carrying *it off whilst in the act of doing so.*

There is a great parade made of the assertion of witnesses that at Tracey's Landing, at Nottingham, and at Benedict, tobacco was taken from the warehouses by the order of the officers in command, and made use of in making breastworks, &c., for the protection of the militia and soldiers from the fire of the enemy when they attacked the respective places. If this were true, and the places had been occupied by authority of an agent or officer of the United States as a part of the system of military defence of the country, and not for the purpose of protecting the private property collected there from the destruction with which it was threatened by the enemy whilst undefended, that fact would give rise to no right of any kind as against the United States. Officers in military command must make use of military means in the operations of war. If they are in command of a post that is exposed to attack, and breastworks or other means of defence are required to make the post tenable, they must employ the troops under their command to throw up entrenchments or field-works. The mattock and spade must be put in requisition where there is earthy matter enough to be moved and made use of to give the proper shelter. Valuable merchandise is not one of the materials of war to be employed in a country where there is earth to be trenched or to be thrown up into embankments.

An officer is no more authorized to take hogsheads of tobacco than he would be bales of any other kinds of merchandise to construct the fortifications he may think advantageous to him; and if he should venture to do so, he would be responsible to the owners of the property for any damage done to it in consequence of its being put to such use, or for its entire value if it should be lost or destroyed. If tobacco was taken in the manner and for the purposes stated in the depositions of the witnesses referred to, those giving the orders would have been responsible personally, and should have been compelled to make good the loss which their orders had occasioned by a civil action. The government is by no means bound for all the acts of its agents. Acts of so extravagant and mischievous a character as those spoken of are never within the scope of their powers, and they who do such acts must be alone answerable for them. But this is not all. If an officer in the military service of the United States were to be stationed at a point where field-works of any kind were requisite for the defence of the position, and he were to fail to throw them up in the ordinary way immediately on his taking command, and afterwards should be driven to the necessity of employing any of the property he was sent to protect for improvising a defence, he should be brought before a court-martial for misconduct and incapacity, and be expelled from the service with disgrace.

In all other respects the claims of the petitioners stand on the same ground as those of the representatives of Rinaldo Johnson and Ann E. Johnson, as presented with Senate bill No. 255; and as for the reasons now given, and those assigned in the report heretofore made upon that bill, which is now referred to and made a part of this report, your committee are of opinion that the petitioners have no claim upon the justice or liberality of the government. They now recommend that the bill do not pass.

Deposition of Austin Cusick.

In June, 1814, when the naval forces of Great Britain ascended the 'atuxent river, the tobacco warehouse at Benedict, Charles county, faryland, contained several hundred hogsheads of tobacco belonging ɔ persons in the neighborhood. With the view to the protection of he property in that village, Captain Carbery's company of the United tates service had been ordered to repair to that place for the purpose f arresting the hostile aggressions of the enemy. As a means of efence, and to give shelter to the men when the enemy opened their uns, Capt. Carbery ordered his men to roll out the tobacco then in he warehouse with the view of erecting batteries. A well-constructed ortification was made and was used as such by the regulars. When he enemy reached Benedict, Capt. Barry, of the royal navy, discovering the uses for which the tobacco had been converted by our forces, and to prevent it from being used again as a military position, had it rolled into the river; some of it was destroyed, and a large portion of it was carried away. I was present myself and beheld the erection of the batteries, and the destruction of the tobacco was in consequence of its being used for military purposes.

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WOODVILLE, PRINCE GEORGE'S COUNTY, MARYLAND,
November 24, 1849.

Personally appeared before me, a justice of the peace of the State of Maryland in and for said county, Austin Cusick, and makes oath on the Holy Evangely of Almighty God that the foregoing statement is true and correct, to the best of his knowledge and belief.

Sworn before

JOS. C. THOMAS, *J. P.*

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Accurately copied by myself from the original, on file in the House of Representatives, United States, in the case of Christopher Neale, assignee of Plummer.

WM. D. MERRICK.

THE PETITION OF WM. G. RIDGELY OF GEORGETOWN, IN THE DISTRICT OF COLUMBIA.

To the Senate and House of Representatives of the United States:

The undersigned respectfully represents, that he claims from the United States indemnity for property destroyed during the late war with Great Britain. He states that he had stored in the public warehouse at Nottingham, in Pince George's county, nineteen hogsheads of tobacco; in Magruder's warehouse, in the same county, twelve hogsheads; and in Benedict warehouse, in Charles county, five hogsheads—all of which were totally destroyed or carried away by the British, and for which he claims compensation.

Your petitioner respectfully takes leave to refer to "the memorial of Christopher Neale, of Alexandria, assignee of Jerome and Gerard

Plummer, late merchants of Alexandria," (marked A, and herewith annexed,) and to the several documents referred to in that memorial, as establishing beyond doubt the facts as to the destroying and carrying away by the enemy of the tobacco stowed in the public warehouses at Nottingham, Magruder's, and at Benedict, in the State of Maryland.

And your petitioner prays such relief in the premises as to your honorable bodies may seem just and proper.

WM. G. RIDGELY.

A.

The memorial of Christopher Neale, of Alexandria, assignee of Jerome and Gerard Plummer, late merchants of Alexandria:

To the Senate and House of Representatives of the United States:

Your petitioner respectfully represents that he claims, as assignee of Jerome and Gerard Plummer, late merchants of Alexandria, indemnity from the United States for property destroyed during the late war with Great Britain. That on the breaking out of the war, the said Plummers were extensively engaged in purchasing tobacco in Maryland; that they had large quantities of tobacco in store in the public warehouse at Nottingham, Prince George's county, Maryland; Magruder's warehouse, in same county; Tracey's Landing, in Anne Arundel county; and Benedict warehouse, in Charles county. That the hogsheads of tobacco which were in the Nottingham warehouse were removed by the order of the commanding officer, and erected into a breastwork, with the view of giving protection to our troops; that the village was in imminent danger of being assailed by the enemy, hence the necessity for the defence of the place; that this necessity was so obvious that nobody pretended to deny it; and the commanding officer would have deserved a severe rebuke had he abstained from using the tobacco as a means of defence. The exercise of this power in the present instance was under circumstances of no ordinary occurrence. The unexpected advance of the British troops upon the villages bordering on the Patuxent river in 1814 found this section of the Union wholly unprotected. In June, 1814, when the enemy ascended the Patuxent river, within twenty-eight miles of Washington city, there was not a breastwork, nor a fortification of any description—not a solitary cannon planted to sound an alarm, or check their progress to the capital of this Union. What was to be done? Under these trying circumstances the commanding officer did not hesitate. He lost no time in strengthening his position and fortifying himself in the best manner time and circumstances would allow. If the necessity exist, then that case has arrived, in which the government may take private property, or endanger its safety, for the public defence. The government did this. They did it through their officer, and the result was a loss to said Plummers. Your petitioner prays that, as the case of George Armstrong is in all respects the same with this, so far as the tobacco

warehouses at Nottingham and Magruder's are concerned, the said papers, affidavits, depositions, letters, and statements, &c., &c., be adopted as proofs in this case. It is well established by the depositions herewith filed that the tobacco, out of which our troops constructed a fortification, was destroyed and carried away by the British in consequence of its being used as a breastwork. (See James Baden's and Major Biscoe's affidavits.) It must be recollected by all who are conversant with the events of the late war, that during the year of 1814 Nottingham was little else than a garrisoned village. Both the regular army and militia made it the place of rendezvous. (See Commodore Barney's letter to General Bowie. See note No. 1.)

Your memorialist deems it proper to account for the cause the warehouse at Nottingham was not burned, together with a house adjoining thereto, (the armory,) in which the arms of the militia were constantly kept. Its exemption from conflagration was owing to its immediate proximity to the village, which would have involved the entire village in flames and inevitable destruction. (See Major Biscoe's statement.)

In relation to the destruction of the warehouse at Magruder's, in Prince George's county, Maryland, the foregoing remarks may be considered as applicable to some extent in explaining the views upon which the claim for indemnification is founded.

The fact is supported by unquestionable testimony that the warehouses were occupied by our troops as a shelter and protection. The occupation of buildings need not be a literal occupation even for a single night. If in the presence of an enemy, it amounted to the occupation which should entitle the owner of the property to full compensation. This position must be conceded. While thus occupied, if it is destroyed, so that occupancy was the cause of its destruction, the government is bound to grant compensation. The individual who owned the property suffered from a new character induced upon his property by the act of the government. The petitioner will further state, that the despatches of Admiral Cockburn, in giving an account of his depredations on the Patuxent river, says that he burnt the warehouses, as he considered them military posts, thus bringing the case precisely within the principles as established by the legislation of Congress.

Extracts from Cockburn's Despatches, June 22, 1814.—"He says that a detachment of sailors and marines were landed on both sides of the river, (Patuxent,) and the enemy's militia had assembled to the number of three to five hundred, retreating before them in the woods; the *marines destroyed the tobacco stores* and several houses *which formed military posts.*" Again, he says, "that Captain Barrie advanced from Benedict to Marlborough; a schooner was found loaded with tobacco; after which they burnt tobacco stores containing two thousand four hundred hogsheads; the detachment re-embarked."

Your petitioner will now investigate the circumstances under which the tobacco inspection warehouse at Tracey's Landing, Anne Arundel county, Maryland, was destroyed. Tracey's Landing is on a small creek, within a short distance of its mouth in the Chesapeake bay. During the *spring of 1814 Commodore* Barney, commanding the

American flotilla in the Chesapeake, in order to lighten his vessel, deposited a considerable quantity of munitions of war in the tobacco warehouse at Tracey's Landing, and left a detachment of men to guard the same; that the said stores and munitions of war were gradually removed overland to the Patuxent for the use of the flotilla, and a considerable quantity remained at the time of the destruction of the said warehouse. In October, 1814, the British fleet, in considerable force, under Admiral Warren, appeared in the Chesapeake, in the neighborhood of Town Point and Tracey's Landing. A detachment of militia were ordered to take post at this point, for the defence of the warehouse aforesaid, where a large quantity of tobacco was in store. This detachment occupied the said warehouse as barracks, by order of Captain Franklin, their commanding officer. The governor of Maryland sent a cannon to the detachment there posted for the purpose of aiding in the defence. The British boats at length entered the mouth of the creek, and were immediately fired upon by the detachment stationed at the point. Being much superior, however, in ordnance and numbers, they succeeded in dislodging the American militia from their position. They then proceeded up the creek to the warehouse at Tracey's Landing, where the militia there stationed had taken the hogsheads of tobacco from the said warehouse, and made barricades and fortifications of them, adjacent to and around said warehouse, for their defence; but they were unsuccessful, and obliged to vacate their position. The British troops soon took possession and burnt the warehouse occupied by the militia, and burnt and destroyed the tobacco, but scrupulously abstained from destroying any other property. The tobacco was taken from the said warehouse and erected into a fortification, by order of Captain Franklin, the officer in command at Tracey's Landing.

The foregoing facts are established by a mass of testimony of the most respectable character, although, unfortunately, the commanding officer of the militia detachment and nearly every other commissioned officer are dead, and their evidence beyond the reach of claimants. It may be necessary to add that the commander of the British forces justified the destruction of the warehouse and the tobacco aforesaid, to Mr. J. S. Skinner, on the ground of its being occupied and used by the American troops. (See John S. Skinner's statement; also the affidavits of Samuel Colt, William Ennis, and James Tongue, to establish the fact of the tobacco being turned into a fortification.)

Was the warehouse occupied "as a place of deposit for naval or military stores of the United States?"

As to the occupancy of the tobacco warehouse as a place of deposit for naval stores, the testimony adduced is conclusive upon this point. Almost all the witnesses refer to such an occupancy of this, under the orders of Commodore Barney, as a place of deposit for the munitions and stores of his naval flotilla upon the Chesapeake bay, and they all concur in stating that the occupancy of the warehouse for this property of the United States commenced in the summer of 1814, and continued until the enemy destroyed it. It further appears that the purser's steward and some of the witnesses say a small guard also were kept in charge of these naval stores at the tobacco warehouse at Tracey's Landing until its capture and confla-

gration. Many of the witnesses state that a part of the naval stores remained in the warehouse at the time of its capture and destruction.

From the testimony of R. Briscoe and others it will appear that all the tobacco in the warehouse was carried away and destroyed, as also that which was used as a fortification.

Your petitioner will now proceed to the investigation of the circumstances under which the tobacco stored in the warehouse at Benedict, Charles county, Maryland, was destroyed and carried away by the naval forces of Great Britain.

In June, 1814, the naval forces of Great Britain ascended the Patuxent river with a very considerable number of vessels of war; on the 15th of June they reached the village of Benedict. For the purpose of resisting the aggressive movements of the enemy, and to arrest their depredations, a portion of the troops of the United States had been stationed in Benedict. The commanding officer of the army finding the station a very exposed one, and without any fortification behind which his men could protect themselves in the event of a conflict with the enemy, and to oppose, if possible, their landing, he was compelled to resort to the only means available to seize and remove the hogsheads of tobacco then stored in the warehouse for the purpose of erecting a breastwork. The order to roll the hogsheads of tobacco out of the warehouse, and to construct a breastwork, was given by an officer of the United States army. That a battery was constructed out of said tobacco. (See Cusick's testimony.)

This was the conversion of private property into the public use, and would grow out of that state of necessity, which is superior to all law, and flows from what the civilians called the eminent domain, which belong to all governments, and is founded on the irresistible dictate and impulse of self-preservation. Every writer in treating of the rights of sovereignty says, that when a nation is at war, it has a right to avail itself of all its means.

The rule laid down in the laws of Congress is, that if the United States, in the prosecution of a war, occupy and use the property of a citizen for military purposes, so as to make it the legitimate object for capture and destruction, according to the rules of civilized warfare, and if, in consequence of such occupancy, the enemy be drawn upon, and do capture and destroy it, the owner shall be compensated out of the public treasury. This is manifestly right, and it is no more than simple justice, under the provision of the Constitution which prohibits the taking of private property for public use without just compensation.

As to the extent of the occupation of the village of Benedict by the British troops, it must be recollected by all who are conversant with the history of the late war, that the country bordering on the Patuxent river, during the year 1814, was little else than a great cantonment. The British troops held possession of this village during the whole summer and part of the fall of 1814. The regulars had been driven out of possession by the arrival of a superior naval force, and the property was destroyed by the enemy. It would be absurd to say that the government would not pay for its destruction, because our troops were not in actual possession at the time of its destruction.

Your petitioner begs leave to state that the abandonment of the possession should be of such a character that the owner could take possession, and enjoy all the rights to which he was entitled; otherwise the troops would be in constructive possession.

That the regulars were stationed in the village of Benedict is a fact, sustained by the affidavit of Austin Cusick, and by the letter of the late Hon. Clement Dorsey, to General Philip Stuart, then commander of the militia forces in this section of the State. Your petitioner will remark, that the said Hon. Clement Dorsey was the aid-de-camp to General Philip Stuart. (See Hon. Daniel Jenifer's statement.)

By a reference to Admiral Cockburn's despatches to Admiral Cockrane, the statement of Austin Cusick is fully sustained and corroborated. He says, "that on the 15th of June, 1814, the Narcissus arrived, and Captain Barrie determined to proceed up the river in twelve boats, having in them one hundred and eighty marines and thirty of *the black colonial corps;* they proceeded to Benedict, where a party of regulars fled, leaving behind several muskets and a part of their camp equipage."

Again, by a reference to the Federal Republican, bearing date 24th June, 1814, which contains a diary of the operations of the enemy from the time Barney's flotilla entered the Patuxent, it will be found that Commodore Barrie, in a conversation with the honorable Clement Dorsey, stated that there were "military and artillery pieces" stationed in Benedict. This assertion on the part of the British commander is not controverted by Dorsey. (See Clement Dorsey's conversation with the commander, and herewith filed.) The facts as contained in the above recited documents go conclusively to the support of Cusick's testimony in relation to the companies of the United States being stationed in Benedict.

The most open village, if resolutely defended, will cost many men before its fall; the village of Benedict being located in an open plain, and situated immediately on the banks of the Patuxent river—from its peculiar localities, surrounded by creeks and marshes, the frame buildings, so far as the working of artillery pieces, affording no shelter—could not have been maintained for one hour against a superior force. In the next place, an officer would have displayed a great want of military knowledge, in the disposition either of artillery or infantry, to have stationed there a military force for any effective purpose, much less have attempted to oppose the landing of the enemy's troops without constructing some work of defence, behind which his men could find protection from the firing of the enemy's vessels of war. The conclusion seems to be irresistible, from these facts and circumstances, that the situation of our troops absolutely required the erection of a fortification. That such an entrenchment was thrown up there can be no doubt, for it is expressly stated that the tobacco was rolled out of the warehouse and used as a fortification. (See John L. Dorsey's affidavit.)

These are the material circumstances attending the destruction of the tobacco at the Benedict warehouse; and in the face of them can there be doubt as to the cause of the destruction? Was it not palpably the use made of this tobacco, its change from a pacific to a

hostile character? Your petitioner ascribes the destruction of the tobacco to its use and occupation by the regulars of the United States service, and the preparation by them to repel the invasion by the British forces. (See Cusick's testimony.) There is no principle better established than this, that if property is destroyed by one of the incidents to the situation and employment of our troops in which it is placed, the government is liable.

Was this tobacco in the Benedict warehouse destroyed and carried away by the British troops? In the affidavits of Zachariah Sothoron, John Moran, and Austin Cusick, bearing date 11th March, 1824, and herewith filed, it is distinctly stated that the tobacco at the Benedict warehouse was destroyed and carried away by the enemy, in consequence of the use to which it was appropriated by our troops when said forces landed in Benedict. The affiants say, "that there was considerable quantity, say four or five hundred hogsheads of tobacco in said warehouse when said force landed;" again, these deponents say, they saw the enemy "burning and otherwise destroying tobacco in the said town of Benedict; not more than thirty hogsheads remained in and about the warehouse."

Your petitioner will remark that the foregoing affidavit was found in the State Department, and filed in a case pending before the board of commissioners, which assembled in the city of Washington, to adjust and examine into the validity of claims under the first article of the treaty of Ghent. According to the interpretation imposed upon this article, it was deemed unnecessary to show how and in what manner the property was destroyed—it was merely necessary to establish the fact that the property was deported by the naval power of Great Britain, and within the waters of the United States, at the time of the ratification of the treaty of peace. Hence the *omission* on the part of the affiants to state that the destruction or the carrying away of the tobacco was in consequence of its being used as a fortification for our troops; all that was required of the claimant was to show its destruction and deportation.

The conclusion that a portion of the army of the United States were stationed in Benedict, and that the tobacco was used as a fortification, and destroyed and carried away by the British forces, perfectly harmonizes with all the testimony filed by your petitioner. The testimony of the deponents strengthen and support each other in all the positions assumed by your memorialist as regards the destruction of the tobacco in the Benedict warehouse. The precedents in favor of the claim now presented are full and complete. (See the reports of the Committee of Claims, House of Representatives, No. 132, 29th Congress, 1st session, and reference to the case of James Tongue and others. See 15th Congress, 1st session, No. 391, House reports; 15th Congress, 1st session, No. 420, House reports.)

Independently of the intrinsic merit, of the claim of your memorialist, it is contended that the principle of indemnity has been recognized and established by the decision, in the case of Jas. F. Sothoron, passed at December session, 1848, which is in all its circumstances far short of the present case. In that case the principle is laid down

that personal property shall be paid for by the government whenever it is converted to public use. (See note No. 2.)

In the view which that committee formed of this case from the evidence, there can be no doubt they considered all the *government responsibility* attaching as soon as the occupation commenced by the American troops and its consequent destruction by the enemy. (See note No. 3.)

That in the great lapse of time it is a difficult work to procure testimony connected with the events of the late war with Great Britain—that many persons who witnessed the scene of what was then called the "Chesapeake depredations" have died, and but few survive to give a full history of the occurrences of that day. It cannot be expected that these events should be sustained by the same definite and precise proof as that which may be required according to the strict principles of a legal proceeding, but that your honorable bodies will consider the special circumstances of the case, and grant compensation in conformity with the principles of equity and justice. The 5th section of the act of 1816 declares "that where any property impressed or taken by public authority for the use or subsistence of the army during the late war has been destroyed, lost, or consumed, the owner of such property shall be paid the value thereof." This section is general, and embraces every description of property. The precedents established and referred to in this memorial proves that Congress did not intend that the act of 1816 should form the boundary of relief; on the contrary, that it considered the special circumstances of each case, and granted indemnification in conformity with the principles of equity and expediency. There can be nothing in this section that sanctions, by the remotest implication, the doctrine that compensation should not be granted in all cases where property has been used for belligerent purposes and offensive operations.

The change of our amicable relations with a foreign power works a change in civil government, and destroys many of the securities by which we hold our property.

Your petitioner further states, that the evidence of this tobacco being stored in the warehouse at Nottingham and at Magruder's, Tracey's Landing, and Benedict, is fully established by the tobacco notes, which were given by the inspectors in obedience to the laws of Maryland regulating the inspection and safe keeping of the tobacco. By the act of Maryland, passed in 1801, ch. 63, section 18, it is declared that the inspector or inspectors who shall pass any tobacco, shall deliver as many notes, under the hand of the inspector or inspectors, to the owner and in his name, as shall be required; in which note or receipt shall be expressed the place and time of reception, the mark of the warehouse, the number, and the gross, tare and net weights for all tobacco inspected and passed; and also in the note shall be expressed whether of the first or second quality, the first quality to consist of tobacco clear of and unmixed with trash; and the said notes shall be payable to the said owner or bearer, and shall be current and receivable in payment of all debts and contracts for tobacco, or judgments and decrees on contracts for tobacco, according

to the terms and intention of the contract, judgment, or decree, (as the case may be,) and shall be *transferrable* from one person to another, and shall be paid, upon demand, by the inspector or inspectors who signed the same. (See affidavits of the Plummers as to their possession of the notes, and Christopher Neale's.)

SEC. 26—Provides a penalty for forging manifests or notes.

Sec. 39—Declares that inspectors "are declared to be answerable to the owners of any notes mentioned and described in such manifest, so far as to produce the same hogshead or hogsheads of tobacco belonging to any owner." (See Dorsey's Laws of Maryland, page 453, vol. 1.)

Your memorialist further states that he had stored in the warehouses at Magruder's 53 hogsheads of tobacco, and 28 hogsheads at the Nottingham warehouse, and 57 hogsheads at Tracey's Landing, and 19 hogsheads in Benedict warehouse—all of which were totally destroyed and carried off by the British, for which he claims compensation.

Your memorialist prays such relief in the premises as may be fair and reasonable.

NOTE No. 1.—See Brigadier General Winder's letter to Major Biscoe, and herewith filed; also General Winder's letter, bearing date 27th July, 1814, to the Secretary of War, in which he says that Colonel Bowen's regiment, 300 strong, and a detachment of regulars, under the command of Lieutenant Colonel Scott, were stationed at Nottingham. See Niles' Register, vol. 7, 283; also Admiral Cockburn's official report to Admiral Cockrane, in which he gives a detailed account of his naval operations on the waters of the Patuxent; he says, "that on his approaching the town (Nottingham) a few shots were exchanged between the boats and some of the enemy's cavalry."

NOTE No. 2.—See Senate Report No. 139, 30th Congress, 1st session. House of Representatives report 57. The report of the Senate states, "that it is difficult to draw a distinction in equity *between a claim for loss of buildings and for the personal property they contain.*"

NOTE No. 3.—See the case of John S. Stiles, adjudicated in the 27th Congress, 2d session. He claimed indemnity for vessels sunk for the defence of the city of Baltimore in 1814. The Judiciary Committee of the Senate say, "that it is the duty of the government to make compensation for them and the damages which their owners had sustained." An act passed for his relief. See 6th vol. of United States Statutes at Large, page 126; also, the act for the relief of sundry citizens of Baltimore for the sinking of vessels at the mouth of the harbor of Baltimore. See 6th vol. United States Statutes at Large, page 265.

FEBRUARY 10, 1853.

DEAR SOUTHALL: Will you be good enough to see Mr. Towle, and say I have received his note respecting my claim before the Senate Committee of Claims, and ask him as to the evidence the committee requires in such cases.

I have the original *notes* for all the tobacco I had in one of the warehouses. My old record book, in which my tobacco was entered, will show the marks, number, and weight of each hogshead, and the warehouse in which it was stored. A bundle of *notes* was inadvertently thrown into the fire and burned by me, with a parcel of *old bank checks*, which had been cancelled, and other old papers which I was destroying at the time for the purpose of clearing out my secretary and writing-desk. I have also old letters, &c., written and received at the time, referring to my heavy loss. If Mr. Towle will ascertain for me from *Governor Pratt in* what way I can satisfy the

committee as to the justice of my claim, and will let me know, I will give prompt attention thereto, as I am exceedingly anxious to have a report this session, if it be possible.

W. G. R.

ELK RIDGE, *June* 11, 1815.

DEAR SIR: I shall make no reply to that part of your favor of the 24th ultimo, and received some days after date, in answer to mine of the 11th, in which I endeavored to account for my conduct towards you, and in which I hope I have succeeded, but proceed at once to the business part of it.

Upon examination of the warehouse at Nottingham, I find that the enemy have left four hogsheads of my tobacco untouched, the weights and numbers of which I have annexed. Deducting those lost at Nottingham, Benedict, and Magruder's, there are left forty hogsheads, viz: 18 crop, and 22 seconds. My loss has been severe indeed, but unavoidable. I went to Nottingham to remove what I had there, but found it impossible to procure wagons or carts; and, had I succeeded, I knew not where to carry it, the private warehouses, barns, &c., for several miles, being full. You give it as your opinion that what remains had better be brought to your place; it appears to me that the difficulty in getting it together, scattered as it is, would be considerable, and perhaps it would require to be reinspected, and would stand in need of cooperage, &c.; would the difference of price in Baltimore compensate for the additional and necessary expenses for reinspection, cooperage, and transportation? The greater part of it is *good* tobacco, taken in by George Biscoe & Son, who were good judges, and particular in their selections; perhaps it would be well to offer the notes for sale first, and see what can be obtained for them, and inform me by mail, to McCay's, when I can immediately reply. I saw some sold by T. Snowden, a few days ago, to G. & J. Hoffman, at $8 50, which was *very indifferent*, though of his own make; what I have seen of mine are very much better; if, upon inquiry, you find that they will not bring a good price now, and, in your judgment, it would be more advisable to have it reinspected and moved to Baltimore, I will proceed to have it done. I think that it will be higher in all this month than later; should news arrive from Europe unfavorable, it would at once depress the price considerably; so that I will thank you to take the trouble to inquire what you can obtain for the notes, as they now are, and let me know. I wish you to be careful of those notes, the hogsheads of which are lost, and send them to me the first safe opportunity, in case I should be able at a future day to obtain any compensation for my loss. When in Georgetown last, I had some conversation with Mr. Gantt about the bonds; he told me, *in confidence*, that he had much conversation with certain gentlemen upon the subject, and that he was *satisfied* they would be cancelled. I requested a further obligation on his part to pay the balance of the bond if payment was enforced. He said that if the penal bond was enforced, the duty bonds, having been paid, would be deducted, and

their amount with what I owed him, would be the amount of the penal bond, within about two hundred dollars. He is brother-in-law to G. W. Campbell, and is very intimate with Rush, Monroe, and Madison, from whom, I suppose, he has obtained his impressions. You will find among the tobacco notes the obligation I obtained from him when I bought the goods.

No appointments have been yet made at Georgetown. I shall write to Mr. Key on the subject to-morrow. I will transfer your stock to you at any moment you wish, or it can be sold, and the money remitted you immediately; or you can continue the instalments as long as you please; my own opinion is, their standing in my name will be of service to me, though your judgment is, doubtless, better than mine.

John C. Weems informed me, yesterday, that D. A. Smith had been in the market, and tobacco had risen, in consequence, to $7 and $9, and was expected still to go higher. I also annex a list of hogsheads at the different warehouses.

Your obedient servant, &c.,

WM. G. RIDGELY.

NICHOLAS G. RIDGELY, Esq., *Baltimore.*

	Hogshead crop.	Second.	Total.
At Nottingham	1	3	4
At Piscataway	9	12	21
At Bladensburg	2	1	3
At Georgetown		4	4
At Blue Plains	2		2
At Broad creek	1	1	2
At Upper Marlborough	1		1
At Pile's warehouse	1		1
At Chaptico	1		1
At Cedar Point			1
			40 hogsheads.

Remaining in warehouse at Nottingham:

A H	416,	1081 —	111	970.
E S	87,	1076 —	80	996.
I B	84,	1050 —	92	958.
I P G	220,	1079 —	94	985.

I hereby certify that William G. Ridgely, of Georgetown, chief clerk in the office of the Navy Commissioners, did, on several occasions (between the appointment of commissioners under the treaty of Ghent and the dissolution of that commission,) call on me at this department, on the subject of his claim for tobacco which had been destroyed or carried away by the *British in their visit* to the Patuxent river

during the last war, and that he frequently advised with me and others as to the probability of remuneration being made to the losers of property of this description, and the best course he could adopt in prosecuting his claim, which he stated to have been for thirty-seven hogsheads of Patuxent tobacco; and from my knowledge of his character, derived from a long and intimate acquaintance, I have no doubt he stated the number correctly. Why this claim has not been registered on the definitive list—and it is but recently I have been apprised of the fact of its not being recorded—I am quite unable to state.

RICH'D FORREST,
Department of State.

JUNE 27, 1827.

NOTTINGHAM, *January* 26, 1815.

DEAR SIR: A day or two after you were at Bellefield I was there, when Mr. Oden informed me you had not received my letter of the — September last, informing you of the fate of your tobacco. Believe me, my friend, I should have accused myself of indifference and a want of gratitude for your polite attention to me, had I not have complied with your request immediately after the receipt of your letter. I wrote you by a Mr. Robert Smith, who lives in the city, and who promised to place the letter in the post office at Georgetown immediately on his arrival there. I am happy to inform you that out of your 24 hogsheads you have five remaining in the warehouse, which is as follows, viz:

T W No. 426	Nt. 937	*Crop.*
A H No. 416	Nt. 970	
I P G No. 220	Nt. 985	*Second.*
E S No. 87	Nt. 996	
I B No. 84	Nt. 958	

And from the exposed state of our warehouse, and the little hope of the general or State governments giving us any protection, I would advise you to have it removed into the interior.

Please present me respectfully to Mrs. Ridgely, and believe me yours, very sincerely,

GEO. WASHINGTON BISCOE.

WM. G. RIDGELY, Esq.
Georgetown, D. C.

BALTIMORE, *December* 27, 1826.

DEAR WILLIAM: Your letter of 22d, by Miss Key, was only handed to me the day before yesterday, and I have been delayed answering it one day in looking for the tobacco notes, &c., which you will now find enclosed. I send you everything I have connected with the business which may tend to elucidate it, and sincerely hope you may be

able to make such use of the papers as to place you on the footing of a claimant for a portion of the British fund; but, really, how you can prove this tobacco was in our waters at the peace, I am at a loss to know. We had about the same time a few hogsheads burned or taken away, which we might be able to add to your list, and give you one-half of what you could get, if, indeed, we thought there was any chance and no proofs required, which we could not produce (and, indeed, very few or none we could produce.) I have spoken yesterday to Mr. Barney about Chase, and will in a few days write him a letter which he engages to do what he can with.

Yours, truly,

N. G. RIDGELY.

Mr. WILLIAM G. RIDGELY.

List of tobacco remaining in Magruder's warehouse.

Mark.	No.	Gross wt.	Tare.	Net wt.	Mark.	No.	Gross wt	Tare.	Net wt.
W. T.	65	988	98	890	I. F. G	25	1,169	116	1,053
I. M	130	1,150	97	1,053	Do	26	1,062	115	947
Do	131	1,188	118	1,070	R. W.	17	1,011	100	911
Do	132	1,237	113	1,124	W. O.	50	1,175	114	1,061
Do	152	1,183	102	1,081	F. E	53	1,037	122	919
Do	153	1,193	120	1,073	W. C.	72	1,121	114	1,007
Do	154	1,116	115	1,001	L. B. G.	74	962	112	850
I. G.	163	1,000	114	986	E. M.	81	1,110	106	1,004
Do	164	1,021	117	904	R. B	83	862	115	747
Do	165	1,097	117	980	R. M.	88	1,093	106	987
I. M	166	993	131	862	D. C	89	956	100	856
I. F. G	228	1,168	104	1,064	W. G.	90	1,172	116	1,056
H. M.	277	1,131	109	1,022	W. C.	107	1,030	116	914
I. P.	278	1,156	125	1,031	P. E.	111	1,112	114	998
I. D.	283	1,254	110	1,144	I. A.	113	918	114	867
I. M.	290	1,044	118	926	I. L.	139	1,112	114	998
I. D.	302	1,223	112	1,111	I. A.	146	1,137	136	1,001
Do	303	1,193	108	1,085	Do	147	1,020	112	908
I. F. G	305	1,212	130	1,080	A. H. W.	148	1,150	105	1,045
Do	306	1,175	102	1,073	Do	149	1,206	100	1,106
F. W. H.	313	1,012	106	906	G. A.	174	1,074	114	960
I. F. G	317	1,150	106	1,044	E. P	178	1,181	114	1,067
Do	318	1,037	137	900	T. R	182	1,091	107	984
Do	319	1,000	135	865	I. M	192	1,050	104	946
A. W.	333	920	94	826	W. C.	196	1,168	118	1,050
T. M. D.	334	1,037	106	931	B. C	199	1,070	90	980
I. M	354	1,218	115	1,103	E. H.	200	1,077	115	962
Do	355	1,352	121	1,231	N. G.	225	1,000	102	898
I. D.	8	982	90	892	I. A.	230	1,025	127	898
I. T.	65	900	122	778	I. F. G	252	1,037	100	937
G. W.	167	1,010	98	912	Do	233	1,162	121	1,041
I. F. G	181	1,106	114	992	Do	234	1,150	100	1,050
Do	183	1,125	108	1,017	I. A	264	1,119	118	1,001
E. P	116	1,194	100	1,094	I. F. G	268	1,169	104	1,065
M. D.	187	1,047	100	947	I. A	273	1,125	105	1,020
G. H.	3	1,031	118	913	Do	274	1,137	144	993
T. W.	15	1,066	110	956	I. W.	276	1,000	106	894

LIST—Continued.

Mark.	No.	Gross wt	Tare.	Net wt.	Mark.	No.	Gross wt.	Tare.	Net wt.
I. T.	281	1,067	108	959	I. W.	97	935	113	822
H. W.	292	1,188	105	1,083	I. S.	98	1,131	110	1,021
Do	293	1,162	108	1,054	T. G	100	1,045	100	945
G. L	294	988	102	886	I. W.	101	950	93	857
W. G.	302	1,100	112	918	Do.	102	1,077	81	991
I. T	307	1,077	112	965	H. W	104	1,240	105	1,135
C. P	317	900	100	800	T. S.	105	1,158	71	1,087
C. M.	319	1,108	100	1,008	B. W.	106	1,044	119	925
W. C.	337	1,036	112	924	Do.	107	1,013	111	902
I. F. G.	338	1,200	108	1,092	B. B.	108	1,050	102	948
I. M	352	1,138	100	1,038	W. H	110	1,070	128	942
Do	353	1,243	108	1,135	I. B.	111	1,287	110	1,177
Do	358	1,246	102	1,144	I. D.	117	1,087	109	976
I. C.	359	856	112	744	P. E.	118	1,201	130	1,071
T. W	371	1,085	108	977	Do.	119	1,250	125	1,125
I. T. W.	382	1,025	100	925	Do.	120	1,162	120	1,042
L. M.	391	1,110	125	985	H. W	121	1,043	118	925
I. B. T.	393	875	106	769	I. H. B.	122	937	100	837
I.H.A.M.	411	775	103	672	Do.	123	1,081	97	984
W. M.	423	1,000	106	894	S. A.	124	1,100	102	1,004
Do	424	952	110	842	G. B.	126	1,062	122	940
L. C.	1	1,056	122	934	I. N.	127	1,161	106	1,055
Do	2	1,075	118	957	T. S.	128	1,050	95	955
R. I	6	862	96	766	I. G.	129	1,118	120	998
Do	11	806	106	700	B. H.	130	1,068	112	936
S. H.	19	1,000	109	891	I. W.	131	1,108	119	986
H. M	23	941	101	840	I. G	132	1,119	117	1,002
H. E.	31	962	92	870	M. W. M	133	1,012	110	902
B. N.	59	1,168	112	956	I. B	135	1,056	112	944
L. W.	60	1,056	102	954	W. N	136	1,039	112	927
E. S	61	1,153	125	1,028	T. R.	137	925	114	811
Do.	62	1,156	115	1,041	C. T.	138	1,081	100	981
I. S.	63	1,023	90	933	I. B.	139	1,065	97	968
H. M. D.	66	1,075	102	973	I. A.	140	1,019	107	912
I. H. G	67	1,300	93	1,207	N. G.	141	1,133	112	1,021
Do.	68	1,262	101	1,161	S. A.	142	1,075	100	975
L. W.	69	1,029	116	913	W. N	143	1,037	112	925
T. S.	70	1,082	96	986	I. H. B.	144	912	104	808
Do.	71	1,167	98	1,069	B. R.	146	1,281	119	1,162
Do.	72	1,073	98	975	M. D	147	1,193	107	1,086
Do.	73	1,169	99	1,070	Do.	148	1,181	105	1,076
R. V. S.	76	1,094	102	992	I. H. G.	149	1,125	105	1,020
W. G.	78	1,056	110	946	W. T.	150	712	104	608
H. M.	79	969	102	867	I. G.	176	1,287	118	1,169
W. G.	80	1,244	111	1,133	H. P.	151	1,087	95	992
H. W.	81	1,125	107	1,018	T. E.	152	1,119	102	1,067
R. A. P.	82	1,050	93	957	W. H	153	1,098	98	1,000
I. R.	85	1,112	102	1,010	H. W	154	1,156	122	1,054
R. B.	86	1,187	109	1,078	I. N.	155	1,068	110	958
T. I. R.	87	1,150	113	1,087	I. P.	156	1,023	98	925
W. G.	88	1,300	114	1,186	H. P.	158	1,221	108	1,113
Do.	89	908	111	797	E. B.	159	1,088	114	974
L. K.	90	1,000	109	991	Do.	160	1,250	151	1,119
M. W. M.	91	1,068	110	958	W. N. C.	161	1,081	111	970
Do.	92	1,081	110	971	I. T.	162	1,012	108	904
Do.	93	1,062	107	955	I. M	163	962	106	856
Do.	94	1,164	125	1,039	I. N.	164	1,150	110	1,040
Do.	95	934	122	812	B. N.	165	1,031	86	945
Do.	96	1,079	125	954	Do.	166	1,031	118	913

LIST—Continued

Mark.	No.	Gross wt.	Tare.	Net wt.	Mark.	No.	Gross wt.	Tare.	Net wt.
I. R.	167	1,062	108	954	R. I.	113	1,180	110	1,070
W. N	168	1,004	110	894	Do	114	1,131	108	1,023
Do.	169	1,125	105	1,020	Do	115	1,150	101	1,049
I. S.	170	1,131	103	1,028	Do	116	1,125	100	1,025
H. P.	171	1,243	112	1,131	Do	117	1,093	103	990
H. W	172	1,225	110	1,115	E. S.	89	1,048	89	954
. G.	173	1,258	120	1,138	C. T	119	1,100	96	1,004
I. W.	174	1,200	114	1,086	Do	120	944	80	864
I. B.	175	1,031	112	919	I. D.	125	1,212	102	1,110
I. G.	177	1,252	116	1,136	I. G	130	982	106	876
S. H.	121	1,054	95	959	E. M.	145	1,262	117	1,145
I. F. G	132	1,272	102	1,170	L. B. G	146	981	98	883
Do	175	1,281	108	1,173	L. C.	153	1,062	103	954
I. T.	136	1,212	100	1,112	P. E	155	1,108	101	1,007
I. C.	191	1,075	111	964	A. G.	158	1,165	96	1,069
Do	194	1,006	110	896	T P	164	1,062	106	956
I. M	196	1,200	96	1,104	C. T	167	1,162	98	1,064
Do	201	1,038	111	927	Do	168	1,043	92	953
I. T. W.	210	1,215	104	1,111	B. S. W.	170	1,087	87	1,000
W. N	220	1,019	106	913	Do	171	1,181	88	1,093
I. P.	221	1,225	109	1,116	R. I	172	1,087	102	985
I. H. A. M.	225	931	106	825	Do	173	1,243	98	1,145
I. D	226	1,037	110	927	Do	174	1,156	104	1,052
W. T. S.	1	906	100	806	Do	175	1,225	106	1,119
R. I.	2	942	102	540	Do	176	1,256	106	1,150
Do	3	837	100	737	Do	177	1,188	102	1,086
Do	8	906	103	803	C. T.	179	1,083	93	990
Do	10	968	106	862	I. C.	180	1,088	111	977
Do	12	844	107	737	E. S.	181	1,069	103	966
I. L.	13	931	100	831	L. C.	185	1,000	96	904
C. M. G	19	1,027	90	937	I. F. G	186	981	93	888
R. V. S.	26	1,000	123	877	S. H	187	1,106	81	1,025
I. F. G	30	1,150	100	1,050	Do	188	1,062	89	973
E. P	32	987	104	883	Do	189	1,037	84	953
I. M	38	1,166	106	1,060	Do	190	1,150	81	1,069
E. S.	43	996	95	901	W. T. C.	191	1,087	90	997
G. G.	46	1,137	88	1,049	W. G.	192	1,038	108	930
R. I.	50	1,069	108	961	T. M.	193	1,131	94	1,037
Do	51	1,140	92	1,048	M. H.	199	1,256	95	1,161
Do	52	1,058	108	950	I. D.	200	1,125	105	1,020
Do	53	1,092	106	986	I. M	202	1,148	92	1,056
Do	54	1,085	110	975	I. D	206	1,025	105	920
I. B.	96	1,169	98	1,075	Do	207	1,120	101	1,019
I. E.	97	1,081	87	994	I. R.	214	1,156	122	1,034
W. N	100	994	107	887	Do	215	1,120	126	994
R. I.	98	1,027	106	921	S. G	216	1,112	108	1,004
Do	99	1,097	102	995	H. P.	217	1,136	100	1,036
Do	101	975	106	869	I. C.	221	975	90	885
Do	102	1,100	110	990	I. T.	222	1,081	117	964
Do	103	1,009	109	900	W. T. S.	223	1,018	100	918
Do	104	1,044	111	933	I. M	224	937	107	830
Do	105	918	103	815	E. E	225	1,016	102	914
Do	106	1,081	110	971	I. W.	226	1,200	122	1,078
Do	107	1,000	98	902	I. M	227	1,075	104	971
Do	108	1,104	107	997	Do	228	1,141	120	1,021
Do	109	962	103	859	Do	229	1,168	122	1,046
Do	110	1,088	113	975	C. H.	230	1,000	100	900
Do	111	964	102	862	I. M	231	1,048	113	935
Do	112	1,125	96	1,029	L. K.	332	1,075	95	980

LIST—Continued.

Mark.	No.	Gross wt.	Tare.	Net wt.	Mark.	No.	Gross wt.	Tare.	Net wt.
I. F. G	234	925	106	819	T. O	46	912	122	790
I. M	235	1,027	120	907	I. T	47	1,114	128	986
I. B	236	1,131	102	1,029	Do	48	1,037	122	915
I. C	237	1,009	102	907	I. H. T	49	1,012	131	881
I. M	238	1,062	101	961	B. S. W	50	1,056	80	976
T. I. R	239	1,075	95	980	Do	51	1,085	97	988
L. K	178	1,106	104	992	Do	52	1,085	84	1,001
I. P	179	1,193	113	1,080	Do	53	981	80	901
Do	180	1,066	123	943	Do	54	1,062	90	972
I. G	181	1,288	122	1,166	Do	55	1,050	95	955
Do	182	1,206	121	1,085	Do	56	1,080	91	987
L. G. C	183	1,077	120	957	Do	57	1,075	85	990
Do	184	1,131	118	1,013	Do	58	1,050	91	959
Do	185	1,189	120	1,069	Do	59	1,004	83	921
I. E	186	1,062	107	955	Do	60	1,027	83	944
B. R	187	1,175	123	1,052	Do	61	1,062	93	969
I. N	188	1,106	106	1,000	A. W	62	1,056	112	944
I. M	189	1,168	112	1,056	I. W. N	63	1,014	101	913
W. N	190	1,050	100	950	W. I. R	64	1,050	116	934
L. C	191	1,081	114	967	C. P	65	1,027	107	920
I. M	192	1,150	114	1,036	B. S. W	66	1,030	90	935
Do	193	1,131	119	1,012	Do	67	1,000	83	917
Do	194	1,131	118	1,033	I. G	115	1,114	114	1,000
H. P	195	1,184	107	1,077	Do	116	1,179	121	1,058
I. W	196	1,085	119	966	S. H	122	1,181	89	1,092
T. S	197	1.000	98	902	I. G	135	1,194	120	1,074
I. W	198	1,100	120	980	Do	139	1,256	114	1,142
Do	199	1,081	116	965	I. F. G	150	1,100	130	970
N. G	200	964	127	837	Do	154	1,089	131	958
Do	201	1,037	133	904	I. M	169	958	106	852
I. P	202	962	110	852	Do	170	1,166	114	1,052
I. E	203	981	120	861	Do	171	1,162	100	1,062
S. H	204	1,200	116	1,084	T. R	7	1,175	113	1,062
M. W	205	1,187	112	1,075	I. F. G	8	987	120	867
Do	206	981	115	866	Do	30	1,156	114	1,042
I. B	1	1,050	122	928	S. H	60	1,188	84	1,104
F. M	2	1,031	106	925	I. G	77	1,262	108	1,154
Do	3	1,019	112	907	Do	78	1,093	106	987
W. N	4	1,089	118	971	I. C	85	979	116	863
F. W	5	1,029	118	911	I. F. G	87	1,021	115	906
B. A. W	6	1,243	114	1,129	S. H	91	1,093	85	1,008
Do	7	1,231	104	1,127	Do	92	1,050	87	963
Do	8	1,080	119	961	I. G	100	1,094	110	984
Do	9	1,048	118	930	L. B. G	4	1,115	115	1,000
T. W	10	1,150	106	1,044	Do	5	1,143	104	1,039
W. A	20	1,191	116	1,075	I. F. G	11	1,175	109	1,066
I. R	22	988	123	865	I. G	17	1,214	120	1,094
I. N	25	1,089	123	966	F. E	28	929	102	827
I. W	26	1,009	107	902	L. B. G	37	1,125	117	1,008
I. S	28	1,000	90	910	D. C	41	1,100	114	986
B. W	29	1,123	132	991	C. S	46	962	104	858
I. W	30	1,062	120	942	Do	47	981	106	875
G. W	31	1,223	122	1,101	I. N	49	1,069	113	956
S. H	32	1,031	119	912	E. B	52	1,250	131	1,119
I. S	41	1,006	96	910	I. F. G	118	1,179	104	1,075
I. I. N	42	1,004	100	904	S. H	119	1,062	97	965
I. C	43	546	118	428	Do	120	1,043	93	950
I. B	44	965	100	865	S.H	299	1,012	81	931
Do	*45*	*1,054*	107	947	I. P	300	1,125	108	1,017

LIST—Continued.

Mark.	No.	Gross wt.	Tare.	Net wt.	Mark.	No.	Gross wt.	Tare.	Net wt.
I. P.	301	1,112	100	1,012	G.F.W.	12	975	110	865
Do	302	969	104	865	I.F.G.	14	1,118	108	1,010
I.D.	305	1,023	108	915	I.I.N	15	1,030	104	926
E.E	306	1,067	93	974	E.S	16	1,206	102	1,104
I.F.	307	1,035	93	942	Do.	17	1,200	96	1,104
I.D.	308	1,014	100	914	F.G.	18	925	101	824
G.M.	309	985	96	889	E.S.	19	1,062	95	967
T.S	310	1,142	109	1,033	D.T.	20	1,106	110	996
I.M	311	1,018	101	967	I.M	21	1,150	100	1,056
I.D.	312	1,027	98	929	Do.	22	962	89	873
S. G	326	1,215	104	1,111	Do.	23	912	87	825
I. W	327	1,062	92	970	A.M.	24	1,200	105	1,095
I D.	331	1,144	104	1,040	I.G.	26	1,025	98	927
Do.	332	1,202	100	1,102	E.S.	27	1,058	95	963
I.F.G.	334	1,050	98	952	W.T.	31	904	86	818
W.W	336	1,125	90	1,038	I.G.	34	1,056	101	950
Do.	337	1,033	88	945	N.G.	35	1,119	99	1,020
I.C.	338	1,030	96	934	P.R	38	944	95	849
W.C.	340	1,087	116	971	I.C.	39	1,114	105	1,009
Do.	341	1,019	119	900	L.W.	40	1,014	89	925
R.B	352	1,008	106	902	I.S.	41	1,087	98	989
I.B.	334	1,083	107	976	I.B	42	1,256	122	1,134
I.M.M.	335	1,150	125	1,025	T.S.	43	1,094	98	995
W.T.S.	336	1,008	82	926	Do.	44	1,110	102	1,008
I.M	337	1,012	105	907	Do.	45	1,013	100	933
Do.	360	1,075	106	969	Do.	46	1,106	98	1,008
F.D.	364	912	90	822	L.M.	47	1,037	121	916
I.B.	365	962	111	851	V.G.	48	1,069	98	971
H.R	366	1,010	83	927	I.M	49	1,052	96	936
R.B.	367	1,006	100	906	Do.	50	1,137	103	1,034
C.H.	368	1,034	118	916	I.W.	53	1,102	100	1,002
L.K.	369	1,012	91	921	G.G.	54	1,170	96	1,074
I.M	370	1,014	102	912	G.C.H.	55	1,075	112	963
W.W	372	1,085	90	995	I.N.	56	1,060	110	950
I.N	374	1,040	96	944	E.S.	57	1,216	104	1,112
G.F.W	375	1,087	104	983	T. C. R.	45	1,112	107	1,005
Do.	376	1,100	104	996	I. F. G.	51	1,220	96	1,124
Do.	377	1,062	108	954	T. P.	62	912	92	820
Do.	378	1,087	101	986	R. I	83	1,150	106	1,044
T.W.	379	1,075	106	969	Do	84	1,088	106	982
E.M.	380	1,137	114	1,023	Do	85	1,212	108	1,104
I.C.	281	1,006	100	906	Do	86	1,190	102	1,088
E.P	382	1,062	104	958	B. W. B.	96	931	102	829
I.B.	383	1,114	96	1,018	I. B	107	1,142	106	1,036
Do.	384	1,145	94	1,051	I.S.	127	1,050	112	936
I.M	385	1,087	90	997	Do	128	1,031	97	934
E.M.	387	1,122	114	1,008	I. T	134	1,067	110	957
E.S.	388	1,208	115	1,097	I M.	135	1,122	96	1,026
I.C.	389	1,077	111	966	I. W.	138	927	79	848
Do.	1	1,075	111	964	R. V. S	141	1,038	111	927
E.S.	2	1,160	111	1,049	I. D	142	1,033	110	923
I.B.	3	1,129	100	1,029	I. B	144	1,162	93	1,069
M.W.	4	1,069	118	951	Do	145	1,212	102	1,110
L.C.	6	975	122	853	I. H. G.	146	956	102	854
G.F.W.	7	1,110	98	1,012	G. M	148	1,131	108	1,023
Do.	8	993	108	885	I. M.	149	1,069	95	974
Do.	9	1,062	101	962	I. P	153	1,075	110	965
Do.	10	1,023	102	921	G. M	154	1,055	108	947
Do.	11	975	104	871	I. P	155	1,112	102	1,010

LIST—Continued.

Mark.	No.	Gross wt.	Tare.	Net wt.	Mark.	No.	Gross wt.	Tare.	Net wt.
R. I	157	1,027	104	923	R. I	286	994	98	896
Do	158	1,112	103	1,009	I. F. G	285	1,050	104	946
Do	159	1,013	109	922	M. H	287	1,072	102	970
Do	160	1,075	114	961	M. D	289	995	107	888
Do	161	1,100	111	989	Do	290	942	103	839
Do	162	1,106	108	998	S. H	293	1,125	82	1,043
Do	163	981	108	873	Do	294	1,154	81	1,071
Do	164	1,037	107	930	Do	295	1,093	86	1,007
Do	165	1,025	109	916	Do	296	1,012	92	926
Do	166	1,130	106	1,024	Do	297	1,042	82	960
Do	167	1,012	110	902	Do	298	1,075	83	992
Do	169	1,023	110	913	I. B	1	1,135	95	1,040
Do	170	1,121	107	1,014	W.C.	2	1,039	100	939
Do	171	1,009	109	900	G. F. W	4	1,137	108	1,029
Do	172	1,134	100	1,034	Do.	5	994	108	886
Do	173	1,150	103	1,047	Do.	6	1,175	104	1,071
Do	174	1,058	107	951	I. W.	7	1,087	115	972
Do	175	1,006	110	896	I. E	10	935	81	854
Do	177	985	109	876	I. M.	11	1,018	95	923
Do	178	1,190	104	1,086	E. G.	13	1,062	91	971
Do	179	1,025	102	923	I. N.	14	1,131	105	1,062
W. N	168	865	100	765	T. S	15	1,142	96	1,046
I. W	180	960	83	877	Do.	16	1,104	99	1,005
W. I. G	186	1,000	106	894	B. N.	17	1,094	110	884
T. W	187	1,052	102	947	L. C.	18	1,222	132	1,090
I. D	188	950	107	843	Do.	20	1,106	117	989
C. T	191	1,075	85	990	M. W. M	23	889	130	759
I. R	199	1,156	108	1,048	L. W	24	1,156	106	1,050
E. B	201	1,094	112	982	I. R	26	1,100	100	1,000
C. T	205	1,112	87	1,025	T. S	27	1,193	98	1,095
Do	206	1,062	92	970	I. R	28	1,075	100	975
A. M	208	1,075	100	975	E. W	29	1,187	114	1,073
I. M	209	1,075	98	977	H. W	31	1,294	119	1,050
I. T	211	1,185	109	1,070	C. T	39	1,168	106	1,062
M. H	213	1,018	108	910	H. W	40	1,062	112	950
W. C	215	1,100	110	990	W. N	41	1,030	119	911
L. B. G	217	1,042	100	942	B. B.	42	965	105	860
I. C	219	968	107	861	W. G	43	1,158	126	1,032
I. D	228	1,031	96	935	I. H. G.	44	1,300	100	1,200
I. E	240	1,114	85	1,029	Do.	45	1,350	117	1,233
R. B. C	242	982	99	883	N. G.	47	1,144	122	1,022
I. F. G	243	996	102	894	I. C	48	1,108	116	992
L. B. G	244	1,006	95	911	N. G.	49	1,062	126	936
W. N	248	923	104	819	P. E.	50	1,256	118	1,138
W. N. C	249	1,083	103	980	Do.	51	1,050	123	927
I. H. G	259	1,145	95	1,050	H. P.	52	1,229	106	1,123
T. P	260	970	113	857	W. H	53	1,162	98	1,064
B. S. W	265	1,108	86	1,022	I. N.	54	1,181	106	1,075
Do	266	1,137	87	1,050	W. N	55	1,018	118	900
Do	267	1,107	87	1,020	I. G.	56	1,212	125	1,087
Do	268	1,042	84	958	Do.	57	1,194	123	1,071
M. H	269	931	108	823	W. N	58	1,072	111	961
R. V. S	271	1,138	104	1,034	E. B.	59	1,002	121	881
I. M	272	1,108	116	992	L. C.	60	1,237	108	1,129
I. R	273	1,012	103	909	Do.	61	1,212	126	1,086
R. I	277	1,225	100	1,125	C. W	62	1,250	125	1,125
Do	278	1,275	102	1,173	E. E.	63	1,175	118	1,057
Do	279	1,280	106	1,194	I. N.	64	1,126	115	1,011
Do	*280*	*1,208*	104	1,104	I. M.	65	958	100	858

LIST—Continued.

Mark.	No.	Gross wt.	Tare.	Net wt.	Mark.	No.	Gross wt.	Tare.	Net wt.
I. B. ----	66	1,087	98	989	I. F. G. --	182	1,075	108	967
W. H ----	67	1,027	123	904	R. I. ----	176	1,231	104	1,127
L. C. ----	68	1,077	106	961	B. W. B --	233	1,002	102	900
T. P. ----	69	1,106	113	993	T. O. ----	338	950	110	840
I. W. ----	70	1,319	125	1,194	B. C. ----	183	982	111	871
T. S. ----	71	1,169	98	1,071	W. C. ----	191	1,166	106	1,060
Do. ----	72	1,119	120	999	I. M -----	67	1,192	90	1,002
Do. ----	73	1,100	108	992	Do. ----	68	1,225	92	1,133
Do. ----	74	1,137	102	1,035	I. D. ----	32	1,162	118	1,044
H. R. ----	75	843	120	723	L. C. ----	114	931	114	817
M. W ----	76	1,048	117	931	Do. ----	115	1,062	128	934
G. A-----	77	1,092	131	961	Do. ----	116	973	123	850
B. R -----	78	1,125	125	1,000	I. D. ----	201	1,075	114	961
T. E. ----	4	1,018	114	904	G. A.....	23	815	96	719
H. N-----	13	1,083	99	984	I. M. ----	150	1,108	114	994

Received, the 11th of March, 1813, of James Naylor, (late inspector,) six hundred and ninety-eight hogsheads of tobacco, now in Magruder's warehouse.

JAMES BADEN.

STATE OF MARYLAND,
Prince George's county, set:

I hereby certify that the within and aforegoing is truly taken and copied from the original, now on file in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of Prince George's county court, this 12th day of December, A. D. 1849.

[SEAL.]

JOHN B. BROOK,
Clerk of Prince George's county court.

List of tobacco notes belonging to William G. Ridgely, of Georgetown, in the District of Columbia, taken or destroyed by the enemy at the warehouses at Benedict, Magruder's, and Nottingham, on Patuxent river, during their visit to that river in the year 1814.

Mark.	No.	Gross.	Tare.	Net.	Date of note.	Name of wareh'se.
T. C.	175	992	92	900	June 30, 1810	Nottingham
	150	1,000	88	912	June 15, 1810	do
	151	1,052	89	963	do	do
	176	1,047	94	953	June 30, 1810	do
	284	1,116	107	1,009	Aug. 29, 1810	do
	210	1,289	103	1,186	do	do
	211	1,284	112	1,172	do	do
	120	1,077	100	977	June 15, 1810	do
	282	1,253	100	1,153	Oct. 31, 1810	do
I. B.	96	1,063	100	963	May 16, 1810	do
	84	1,050	92	958	May 25, 1810	do
E. S.	400	1,041	106	935	Nov. 28, 1810	do
	231	1,346	98	1,248	Sept. 15, 1810	do
	87	1,076	80	996	May 26, 1810	do
W. C.	46	1,023	88	935	April 7, 1810	do
W. N.	102	1,055	106	949	May 22, 1810	do
A. H.	416	1,081	111	970	Dec. 20, 1810	do
I. M.	158	1,146	109	1,037	June 23, 1810	do
G. P.	307	1,047	95	952	Sept. 8, 1810	do
I. P. G.	299	1,064	92	972	Sept. 3, 1810	do
	220	1,079	94	985	do	do
I. G.	408	1,069	114	955	Dec. 8, 1810	do
A. P.	325	1,062	112	950	do	do
G. F. W.	375	1,087	104	983	March 9, 1811	Magruder's
	376	1,100	104	996	do	do
	377	1,062	108	954	do	do
	378	1,087	101	986	do	do
	7	1,110	98	1,012	April 2, 1811	do
	8	993	108	885	do	do
	9	1,062	100	962	do	do
	10	1,062	100	962	do	do
	11	975	104	871	do	do
	12	975	110	865	do	do
I. W.	327	1,062	92	970	Nov. 3, 1810	do
S. G.	216	1,112	108	1,004	Nov. 18, 1810	do
I. C.	352	1,174	106	1,068	April 2, 1811	Benedict
R. L.	287	890	78	812	Jan 2, 1810	do
I. B. W.	115	1,087	93	994	Oct. 19, 1810	do
I. I.	126	1,126	93	1,033	Nov. 21, 1810	do
I. B. I.	141	1,010	87	923		

Patuxent River, Nottingham Warehouse, December 8, 1810.

Mark.	No.	Gross.	Tare.	Net.	
A. P.	325	1,062	112	950	Received of Alexander Philpott one hogshead of second tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Philpott, or his order, for exportation, when demaded. BOSWELL & FOWLER, *Inspectors.*

LIST—Continued.

Patuxent River, Nottingham Warehouse, December 8, 1810.

Mark.	No.	Gross.	Tare.	Net.	
F. G.	408	1,069	114	955	Received of Francis Green one hogshead of crop tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Green, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, September 3, 1810.

Mark.	No.	Gross.	Tare.	Net.	
I. P.G.	299	1,064	92	972	Received of John P. Greenfield one hogshead of crop tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Greenfield, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, September 8, 1810.

Mark.	No.	Gross.	Tare.	Net.	
G. P.	307	1,047	95	952	Received of Gustavus Proctor one hogshead of crop tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Proctor, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, June 23, 1810.

Mark.	No.	Gross.	Tare	Net.	
I. M.	158	1,146	109	1,037	Received of James Moreland one hogshead of crop tobacco, mark, number, and weight as per margin, to be delivered to said Moreland for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, May 22, 1810.

Mark.	No.	Gross.	Tare.	Net.	
W.N.	102	1,055	106	949	Received of William Nevitt one hogshead of crop tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Nevitt, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, April 7, 1810.

Mark.	No.	Gross.	Tare.	Net.	
W. C.	46	1,023	88	935	Received of Wm. Cooke one hogshead of crop tobacco, mark, number, and weight as per margin, which we promise to deliver to the said Cooke, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors*

LIST—Continued.

Patuxent River, Nottingham Warehouse, September 15, 1810.

Mark.	No.	Gross.	Tare.	Net.	
E.S.	231	1,346	98	1,248	Received of Elizabeth Smith one hogshead of second tobacco, mark, number, and weight, as per margin, which I promise to deliver to the said Smith, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, November 28, 1810.

Mark.	No.	Gross.	Tare.	Net.	
E. S.	400	1,041	106	935	Received of Elisha Skinner one hogshead of crop tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Skinner, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, May 16, 1810.

Mark.	No.	Gross.	Tare.	Net.	
L. B.	96	1,063	100	963	Received of John Boone one hogshead of crop tobacco, mark, number, and weight as per margin, to be delivered to said Boone, or order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, October 31, 1810.

Mark.	No.	Gross.	Tare.	Net.	
T. C.	282	1,253	100	1,153	Received of Thomas Contee one hogshead of second tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Contee, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, June 15, 1810.

Mark.	No.	Gross.	Tare.	Net.	
T. C.	120	1,077	100	977	Received of Thomas Contee one hogshead of second tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Contee, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, August 29, 1810.

Mark.	No.	Gross.	Tare.	Net.	
T. C.	210 211	1,289 1,284	103 112	1,186 1,172	Received of Thomas Contee two hogsheads of second tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Contee, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

LIST—Continued.

Patuxent River, Nottingham Warehouse, June 30, 1810.

Mark.	No.	Gross.	Tare.	Net.	
T. C.	176	1,047	94	953	Received of Thomas Contee one hogshead of crop tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Contee, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, June 15, 1810.

Mark.	No.	Gross.	Tare.	Net.	
T. C.	150 151	1,000 1,052	88 89	912 963	Received of Thomas Contee two hogsheads of crop tobacco, mark, number, and weight as per margin, which we promise to deliver to the said Contee, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, June 30, 1810.

Mark.	No.	Gross.	Tare.	Net.	
T. C.	175	992	92	900	Received of Thomas Contee one hogshead of crop tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Contee, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Patuxent River, Nottingham Warehouse, August 29, 1810.

Mark.	No.	Gross.	Tare.	Net	
T. C.	284	1,116	107	1,009	Received of Thomas Contee one hogshead of crop tobacco, mark, number, and weight as per margin, which I promise to deliver to the said Contee, or his order, for exportation, when demanded. BOSWELL & FOWLER, *Inspectors.*

Mark.	No.	Gross.	Tare.	Net.	Date of Note.	Name of wareh'se.
T. C.	175	992	92	900	June 30, 1810	Nottingham.
	150	1,000	88	912	June 15, 1810	do.
	151	1,052	89	963	do.	do.
	176	1,047	94	953	June 30, 1810	do.
	284	1,116	107	1,009	Aug. 29, 1810	do.
T. W	426	1,045	108	937	Jan. 14, 1811	do.
I. B.	96	1,063	100	963	May 16, 1810	do.
E. S.	400	1,041	106	935	Nov. 28, 1810	do.
W. C	46	1,023	88	935	April 7, 1810	do.
W. N.	102	1,055	106	949	May 22, 1810	do.
A. H.	416	1,081	111	970	Dec. 20, 1810	do.
I. M.	158	1,146	109	1,037	June 23, 1810	do.
G. P.	307	1,047	95	952	Sept. 8, 1810	do.
I. P. G.	299	1,064	92	972	Sept. 3, 1810	do.
F. G.	408	1,069	114	955	Dec. 8, 1810	do.
A. P.	325	1,062	112	950	do.	do.

LIST—Continued.

Mark.	No.	Gross.	Tare.	Net.	Date.	Name of wareh'se.
E. S	231	1,346	98	1,248	Sept. 15, 1810	Nottingham
	87	1,076	80	996	May 26, 1810	do
T. C	210	1,289	103	1,186	Aug. 29, 1810	do
	211	1,284	112	1,172	do	do
I. B	84	1,050	92	958	May 25, 1810	do
T. C	120	1 077	100	977	June 15, 1810	do
	282	1,253	100	1,153	Oct. 31, 1810	do
I. P. G	220	1,079	94	985	Sept. 3, 1810	do
G. F. W	375	1,087	104	983	March 9, 1811	Magruder's
	376	1,100	104	976	do	do
	377	1,062	108	954	do	do
	378	1,087	101	986	do	do
I. W	327	1,062	92	970	Nov. 3, 1810	do
G. F. W	9	1,062	100	962	April 2, 1811	do
	10	1,062	100	962	do	do
	11	975	104	871	do	do
	12	975	110	865	do	do
	7	1,110	98	1,012	do	do
	8	993	108	885	do	do
S. G	216	1,112	108	1,004	Nov. 18, 1814	do
I. C	352	1,174	106	1,068	April 2, 1811	Benedict
R. L	287	890	78	812	Jan. 2, 1810	do
I. B. W	115	1,087	93	994	Oct. 19, 1810	do
I. I	126	1,126	93	1,033	Nov. 21, 1810	do
I. B. I	141	1,010	87	923		

SENATE COMMITTEE OF CLAIMS,
February 9, 1853.

SIR: In reference to your petition "praying indemnity for tobacco destroyed by the British in the war of 1812," now pending before this committee, I am directed by Governor Pratt to inform you that there is no evidence accompanying your petition upon which the committee can act. The destruction of the warehouses named by you may be an admitted fact, but there is no evidence submitted that any property belonging to you was destroyed, or that you had any tobacco in the warehouses at all. The unsupported statement of a claimant, however respectable, cannot be received as evidence.

Respectfully, your obedient servant,

N. C. TOWLE,
Clerk Committee of Claims.

Mr. W. G. RIDGELY,
Georgetown, D. C.

IN THE SENATE OF THE UNITED STATES—*January* 4, 1854.

Mr. PRATT, from the Committee of Claims, submitted a report, (No. 19,) accompanied by the following bill; which was read, and passed to a second reading:

A BILL for the relief of William G. Ridgely.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the treasury shall audit the claim of William G. Ridgely, for tobacco destroyed by the British, in eighteen hundred and fourteen, at the warehouses at Nottingham and Magruder's Ferry, in Prince George's county, and at Benedict, in Charles county, Maryland, and from such proof as may be exhibited to them, within six months after the passage of this act, ascertain the quantity and value of his tobacco so destroyed; and that the amount so ascertained shall be paid, out of any money in the treasury not otherwise appropriated, to the said William G. Ridgely.

IN THE SENATE OF THE UNITED STATES—*May* 2, 1856.

Mr. Wade made the following report, (to accompany bill S. 278:)

The Committee of Claims, to whom was referred the petition of William G. Ridgely, report:

This claim is for indemnity for a quantity of tobacco belonging to the petitioner, which was destroyed by the British during the invasion of Maryland, in the year 1814. The tobacco was stored in the public warehouses at Nottingham, Magruder's and Benedict, in said State, and the facts and circumstances attending its destruction are set forth in the report from this committee (No. 183) at the last session of Congress, on the petitions of the widow of Rinaldo Johnson, and of Hodges and Lansdale, for whose relief a bill was reported and passed the Senate. The provisions of the bill referred to authorizes the proper accounting officers of the treasury to audit the claims of the said claimants, and to ascertain the quantity and value of their tobacco so destroyed, and that the amount so ascertained should be paid. As the claim of Mr. Ridgely involves the same facts and principles, it is deemed just and equitable that the same relief should be extended to him. The accompanying bill is accordingly reported.

IN THE SENATE OF THE UNITED STATES—*May* 2, 1856.

Mr. WADE made the following report, (to accompany bill S. 278:)

The Committee of Claims, to whom were referred the petition of the widow of Rinaldo Johnson, and the petition of Hodges & Lansdale, providing indemnity for tobacco destroyed by the British in 1814, *have given the subject a thorough investigation, and now report:*

That Commodore Barney, in 1814, commanded the United States flotilla designed by the American government to protect the Chesapeake bay and its tributaries from the naval force of the enemy; that to prevent the capture of the vessels under his command, he was com-

pelled to abandon the Chesapeake, and was induced to sail up the Patuxent river, one of its tributaries, with the hope that the British would be unable, or at least unwilling, to follow with their larger vessels. This expectation of the commodore was not realized; he was pursued by the enemy, and was ultimately compelled to blow up his vessels to prevent their capture.

It is well known to the Senate that from this period the Patuxent river was permanently occupied by the naval forces of the enemy, and became the point from which various military expeditions were ordered against the surrounding country, terminating with the capture of Washington, and the burning of the Capitol. General Winder was placed in command of this military division; the militia was called out to resist the landing of the British forces, and for a considerable period were successful in several instances in preventing the landing, and in all instances in driving the enemy back to their vessels.

It appears, from the evidence, that two public warehouses had been erected many years before this period upon the margin of the Patuxent, for the inspection and deposit of the tobacco grown by the citizens of Prince George's county—one at the village of Nottingham, the other at Magruder's Ferry; that these houses were in 1814 filled with hogsheads of tobacco, the property of the planters of that county, or of merchants who had purchased it for shipment; and that the tobacco for which remuneration is now claimed by the petitioner, R. Johnson, had been deposited in the warehouse at Magruder's Ferry, and that the tobacco for which payment is asked by Hodges & Lansdale was deposited in the warehouse at Nottingham. The evidence conclusively establishes the fact that the warehouse at Magruder's Ferry was burned by the British, with all the tobacco it contained, and that all the tobacco in the warehouse at Nottingham was either taken away or burned by the enemy.

In investigating the right of the petitioners to indemnity from the federal government, your committee at once perceive that the petitioners could never have claimed indemnity under the general laws of 1816 and 1817, because the relief designed to be afforded by those acts *expressly and exclusively* applied to injuries to *real property*. The act of 1816 provides "that any person who, in the time aforesaid, has sustained damages by the destruction of his or her *house* or *building* by the enemy, while the same was occupied as a military deposit under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage, provided it shall appear that such occupation was the cause of its destruction."

Your committee have been unable to recognise the force or propriety of the distinction which makes the United States liable for *real property* destroyed by the enemy, and which exempts the government from liability for *personal property* destroyed under the same circumstances; they are unable to appreciate the justice of a rule which makes the government liable for a house burned by the enemy, and exempts it from liability for the personal property burned in the house.

Your committee are of opinion that the United States should be held liable to reimburse her citizens, whenever private property has been (in accordance with the usages of civilized warfare) destroyed by t

public enemy, *because of its use* for military purposes by the authority of an officer or agent of the government.

Your committee believe that the facts, to which they will now very briefly advert, fully establish the right of the petitioners to relief, under the principle here laid down.

First. In reference to the warehouse at Magruder's Ferry, it appears that a considerable American force was stationed behind this warehouse, which, being filled with tobacco, afforded complete protection against the cannon of the enemy, and that a battle was fought with the British vessels, which continued until the ammunition of our troops was exhausted, and they were consequently obliged to retreat. It is clearly proven that upon the retreat of the American forces, the British landed and burned the warehouse, with the tobacco of the petitioner, R. Johnson, and others therein contained. In regard to the tobacco destroyed at the Nottingham warehouse, it appear that this warehouse was for a considerable time the depository of the military stores intended for the use of the militia employed in the defence of this exposed section of Maryland, and that upon one occasion the tobacco was rolled, by the directions of the officer in command, from this house, with which a breastwork was formed, from behind which the enemy were fought and repulsed. It also appears that when the enemy subsequently landed and proceeded to Washington, they destroyed or took away all the tobacco deposited in this warehouse which belonged to the petitioners, Hodges & Lansdale, and others.

Your committee further report that no possible doubt can exist as to the quantity of the tobacco which belonged to the petitioners, because it is evidenced by tobacco notes now in their possession, or deposited in the State Department, which designate each hogshead and the net weight of its contents. There are many precedents, to which your committee do not deem it necessary to refer, where the government have paid for personal property destroyed under similar circumstances. The value of the tobacco is also established by satisfactory proof; but the committee have deemed it better, in the bill which they have prepared for the relief of the petitioners, to provide that the proper accounting officers of the treasury shall ascertain, from such proof as may be laid before them, the quantity and value of the tobacco destroyed, and shall pay the value so to be ascertained.

There being no distinction in principle in the right of the petitioners to relief, the committee have reported a bill for their joint relief, which they confidently recommend to the favorable consideration of the Senate.

NOTTINGHAM, *August* 28, 1828.

SIR: At your request for information in relation to the tobacco (your property) taken from the warehouses at Nottingham by the British during the period of their invasion, I have to state that a part of your tobacco was used by my order, as commanding officer at Nottingham, for the *purpose of erecting* a breastwork for the defence

of the place; and, to the exception of three or four hogsheads, I am confident, out of the sale I made to you of 105 hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a part of the tobacco thus used was sold by him to you.

With due respect, yours, very truly,

GEO. W. BISCOE.

CHARLES J. CATLETT, Esq.

DISTRICT OF COLUMBIA, } *to wit:*
Washington county, }

On this 28th day of August, 1828, personally appeared George W. Biscoe before me, the subscriber, a justice of the peace in and for the county aforesaid, and made oath on the Holy Evangelist of Almighty God that the facts as stated in the above and foregoing letter are correct and true, to the best of his knowledge and belief.

JAMES ORD, *J. P.*

GRAYSTOWN, *February* 27, 1832.

SIR: I have been requested by Mr. Catlett to state to the committee over which you preside my knowledge and opinion of the destruction of the tobacco in the tobacco warehouses in the lower counties of Maryland by the enemy during the late war with England. I have no personal knowledge of any except the warehouse and its contents at Cedar point, in Charles county, which was certainly destroyed, so far as we can judge of the actions of men, in consequence of an attack on the enemy at that place by the militia under the command of the late General Stuart, because the warehouse, with the tobacco, afforded protection to the American troops. A tobacco warehouse, filled with tobacco, is believed to be cannon-proof, and the house then full afforded complete protection to a portion of our troops. It was burned by the enemy in the evening of the day of the engagement.

I have no knowledge of the circumstances attending the burning of other warehouses; but from their situation, the complete protection they afforded persons covered by them, and the generally prevailing opinion in that part of the country at the time, I have no doubt that most of them were destroyed to deprive our troops of shelter and protection.

I have the honor to remain, very respectfully, yours, &c.,

B. J. SEMMES.

Hon. W. C. WHITTLESEY,
Chairman Committee of Claims, Washington.

HOUSE OF REPRESENTATIVES, *February* 27, 1832.

Having been requested by Mr. Catlett, of Maryland, to state my knowledge of the manner of the destruction of the tobacco warehouse at Cedar Point, on the Patuxent, I would remark that during the late war, I think in the summer of 1814, some schooners of the enemy were anchored off the warehouse; that some of the crews landed and were in the act of taking away some of the tobacco, when General Stuart, the commander of the troops in the vicinity, ordered them down, and commenced an attack with artillery upon the enemy at the warehouse; that after firing several shots from cannon, &c., the warehouse was set fire to by the enemy and levelled to the ground, with all the tobacco then in the house. Had the attack not have been made by the American troops, it is believed that the house would not have been fired, as above and below, on the Potomac, tobacco warehouses were visited by the enemy and not destroyed. Being at the time acting as an aid to the general, I was present and saw the attack and firing of the tobacco warehouse.

Yours, &c.,

D. JENIFER.

The COMMITTEE OF CLAIMS.

NOTTINGHAM, *February* 27, 1832.

DEAR SIR: The statement which I am about to make, if necessary, I can verify on oath. I now do so, on honor, as brigade commander of the militia of Maryland and an officer holding a commission of surveyor and inspector of the revenue under the general government. You request information on the subject of the defence of Magruder's warehouses, in June, 1814, by a detachment of militia acting under my orders. In reply, I have to state, that the captain in command reported to me his encounter with the enemy at that place; he stated that, on the near approach of the British barges (said to be) under the command of Commodore Baine and Colonel Malcomb, of Maine, he posted his men behind the warehouses, situated within thirty yards of the shore, and that so soon as his fire of musketry could be deemed effectual, he commenced and continued to do so for an hour or two, being under cover of the warehouses; finally his ammunition became expended, and he was compelled to retire; the enemy then landed and set fire to the warehouses, which were burned.

I am aware that you sustained considerable loss in tobacco there, and elsewhere on the Patuxent river, from the circumstance of your having purchased of me more than one hundred hogsheads, which, with the exception of a few, say (to the best of my recollection) four or five at the warehouses here, was either burned in Magruder's warehouses, at the period above stated, or was carried away by the enemy, on their retreat from the city of Washington, to the shipping at this

place. At one period I used the tobacco in the warehouses here for military purposes; a part of which was, I recollect, your property, (having sold it to you.)

Wishing you success in your appeal to Congress, I remain, truly, your obedient servant,

GEO. WASHINGTON BISCOE,

CHARLES J. CATLETT, Esq.

—

DISTRICT OF COLUMBIA, } *to wit:*
Washington county, }

On this 20th day of December, 1833, personally appeared before me, the subscriber, a justice of the peace in and for said county, Jesse Selby, and makes oath on the Holy Evangelist of Almighty God, that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia, commanded by Captain Joshua Naylor; and that the said warehouse, he verily believes, was burned in consequence of said company being there, and the said warehouse affording protection, and being occupied by them. This deponent further states that Captain Naylor died in the year 1825.

Sworn before

HENRY WERTZ, *J. P.*

—

DISTRICT OF COLUMBIA, } *to wit:*
Washington county, }

On this 20th day of February, 1835, before me, the subscriber, a justice of the peace in and for said county, personally appeared James Baden, and made oath on the Holy Evangely of Almighty God, that General George W. Biscoe, commanding the Maryland militia, on the 17th day of June, 1814, (then Major Biscoe,) ordered the tobacco to be rolled out of the warehouse in *Nottingham*, in Prince George's county, Maryland, and a large breastwork made of the tobacco, the cannon planted behind it, and then we fired on the British, who manned eleven barges, commanded by Commodore Barry, who at that time retreated; the heads were out of many hogsheads, and the tobacco a good deal torn out. The British, some time after, took the most of the tobacco from that warehouse, and they kept possession of the waters of the Patuxent river as high as Nottingham from that time until they burned the Capitol.

Captain Naylor's company of Maryland militia were stationed behind *Magruder's warehouse,* and as soon as the British barges came within gunshot commenced firing upon them, and continued until the ammunition was expended. They then retreated; and the enemy immediately landed, set fire to the warehouse, and burned all the tobacco within it. This was on the 17th day of June, 1814, as above

stated, which day we prevented them from coming to Nottingham, which probably prevented that warehouse from sharing the same fate. This deponent further saith that he was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham. Charles J. Catlett was a large owner of tobacco, and a very heavy sufferer. This deponent further saith that he was appointed inspector in January, 1813, at Magruder's warehouse. Previous to his appointment, James Naylor was the inspector.

JAMES BADEN.

Sworn to and subscribed before me, the day and year first before written.

ROBERT CLARKE, *J. P.*

James Baden of Prince George's county, in the State of Maryland, states that General George W. Biscoe was commanding the Maryland militia on the 17th of June, 1814, (then Major Biscoe,) and ordered the militia companies to roll the tobacco out of the warehouses in Nottingham, and made barricades and fortifications of the hogsheads of tobacco which was stored in said warehouse, and ordered also the cannon to be planted behind it; that the militia then fired on the British who manned eleven barges commanded by Commodore Barry, who at that time retreated. That the British afterwards took the tobacco out of the warehouse and that which had been rolled out and used as a fortification, and destroyed and carried it away. That the British kept possession of the waters of the Patuxent river as high as Nottingham until they had destroyed the Capitol. That Captain Naylor's company of Maryland militia were stationed behind Magruder's warehouse, which was taken possession of by the militia as a military post, by order of the commanding officer, Major Biscoe, and as soon as the barges came within gun-shot the militia commenced firing upon the enemy, and continued to do so until their ammunition was expended; that they retreated, and the British forces landed immediately and took possession of said warehouse, which had been used by the militia as a work of defence and protection, and burnt the warehouse and all the tobacco, numbering several hundred hogsheads of tobacco, belonging to inhabitants of the neighborhood and merchants abroad who purchased tobacco on speculation; that the conflagration of this warehouse at Magruder's took place on the 17th of June, 1814; that witness was the inspector at Magruder's warehouse, but commanded a company at Nottingham; that witness was appointed inspector in the spring of 1813 at Magruder's warehouse, and that previous to his appointment James Naylor was the inspector; that he believes the burning of the warehouse was in consequence of its having been occupied by the militia as a post of military defence or depot, and that the burning and carrying away the tobacco at Nottingham was done in consequence of using the hogsheads of tobacco as a fortification and protection of our troops, and thus giving to tobacco a *hostile character*; that he was inspector

at the time of the destruction of the warehouse at Magruder's, and has been inspector of tobacco at Nottingham and Magruder's warehouses for 18 years, and on no occasion did he ever deliver tobacco for shipment where notes had been given to the person whose tobacco had been inspected without the delivery up of the notes, as he made himself responsible for every hogshead of tobacco as soon as he gave his notes for the inspection. The books of the inspectors were destroyed at the time of the burning of the warehouses.

STATE OF MARYLAND, }
Prince George County. } *ss.*

On this 26th day of December, in the year 1851, personally appears before me, one of the State of Maryland justices of the peace in and for Prince George's county aforesaid, James Baden of said county and State, and made oath on the Holy Evangely of Almighty God that the aforegoing statement is true and correct to the best of his knowledge and belief.

Sworn before THOS. M. D. BADEN, *J. P.*

Statement of Austin Cusick, of Charles county, Maryland.

In June, 1814, when the naval forces of Great Britain ascended the Patuxent river, the tobacco warehouse at Benedict, Charles county, Maryland, contained several hundred hogsheads of tobacco belonging to persons in the neighborhood; with the view to the protection of the property in that village, Captain Carbery's company of the United States service had been ordered to repair to that place for the purpose of arresting the hostile aggressions of the enemy. As a means of defence, and to give shelter to his men when the enemy opened their guns, Captain Carbery ordered his men to roll out the tobacco then in the warehouse, with a view to erecting batteries. A well constructed fortification was made, and was used as such by the regulars. When the enemy reached Benedict, Captain Barry of the royal navy, discovering the uses for which this tobacco had been converted by our forces, and to prevent it from being used again as a military position, had it rolled into the river; some of it was destroyed, and a large portion was carried away. I was present myself, and beheld the erection of the batteries and the destruction of the tobacco, which was in consequence of its being used for military purposes.

VANSVILLE, }
Prince George's county, Maryland. }

Personally appears before me, a justice of the peace of the State of Maryland in and for said county, Austin Cusick, and makes oath on the Holy Evangely of Almighty God that the foregoing statement is true and correct to the best of his knowledge and belief. Sworn before

NOVEMBER 24, 1849. JOS. C. THOMAS, *J. P.*

WASHINGTON, *April* 9, 1850.

The undersigned as counsel for Messrs. Hodges and Landsdale, and William Wilson & Son, begs leave respectfully to submit herewith, in behalf of the petitioners, copies certified on 5th April, 1850, by Third Auditor of Treasury, to be correct transcripts of the testimony of George W. Biscoe, April 28, 1828; B. J. Semmes, February 27, 1832; Hon. D. Jenifer, February 27, 1832; George W. Biscoe, February 27, 1832; Jesse Selly, December 20, 1833; James Badin, February 20, 1835, heretofore produced and filed at the settlement made on 29th September, 1841, by report No. 13280, in the office of the Third Auditor of the Treasury Department, under the act of Congress approved 2d July, 1836, for the relief of Charles J. Catlet; which testimony relates to the destruction of the tobacco in the warehouses at these places, to wit: At Nottingham, and Magruder's on the Patuxent river, and Cedar point on the Potomac.

By this evidence it is proved, first, that at Nottingham on the Patuxent, under the orders of General, then Major Bisco, as commander of the Maryland militia, part of the tobacco then in the warehouse was used to make a breastwork, behind which he planted cannon, and under its cover fired on the British barges, and forced them to retreat; and that after this, the British took most of the tobacco from this warehouse, and kept possession of the waters of the river at this place, until the burning of the Capitol at Washington.—(See the deposition of G. W. Biscoe of 28th November, 1828, and of James Baden, of 20th February, 1835.)

2. That at warehouses at Magruder's on the Patuxent river, Captain Joshua Naylor, acting under General Biscoe's orders, on the 17th June, 1817, stationed his troops behind the warehouses, thirty yards from the shore, and as soon as the British barges came within gun shot, he opened under this cover a fire on the enemy, and continued it for an hour or two; and that as soon as his ammunition being expended, he ceased his fire and retreated. The British landed and set fire to the warehouses and burnt them.—(See deposition of Jesse Selly, 20th December, 1833, and letter of General G. W. Biscoe, 27th February, 1832, and deposition of James Badin, 20th February, 1835.)

3. That at Cedar point, in the Potomac, under command of General Stuart, the militia were ordered to the warehouse, which, when filled with tobacco, is cannon proof, and completely protected the troops there, to make an attack on the British schooners which were anchored off the warehouse; that after several cannon shot were fired, the enemy set fire to the warehouse and levelled it to the ground, with all the tobacco then in the house, of which the Hon. D. Jenifer says he was an eye-witness, being aid to General Stuart.—(See letter of B. J. Semmes, 27th February, 1832, letter of Hon. D. Jenifer, 27th February, 1832.)

This evidence shows that the warehouses, by being filled with tobacco, were thereby rendered cannon-proof, and being close to the water's edge afforded protection and cover for attack on the enemy, and caused their destruction by the British.

Messrs. Hodges and Landsdale have the original tobacco notes which *establish their claim, and Messrs.* W. Wilson & Son have

heretofore had their notes filed in the Department of State, and they will probably be found with the testimony and claims produced and left with the proceedings of the commissioners under the Treaty of Ghent.

Relief and indemnity is asked by petitioners on the ground that under the orders of military officers of the United States the warehouses, when filled with tobacco, and the tobacco stored in them, were both used, and chiefly the tobacco, because of its being cannon-proof, for the shelter or cover of the American troops in attacking the British vessels when within gun-shot of the covers, and because in consequence of these attacks, under such cover, the enemy destroyed, burnt, and carried off the tobacco.

Such destruction, in consequence of the use of the tobacco by United States forces under order of officers in command, brings the claim of the petitioners within the principles which have been always acted on, both in general and special acts of Congress, for indemnity to citizens where property has been taken or destroyed for the public welfare and protection.

These principles have been recognized in reference to wagons, carts, horses, &c., which have been lost or destroyed when in public service, either by agreement or by impressment, as will be evident by referring to the general acts of 4th May, 1822, chap. 48, (3 Pet. L. United States,) and 26th May, 1842, chap. 187, (4 Pet. L. United States, p. 70,) relating to the Seminole war; to the acts of 18th June, 1837, chap. 5, (5 Pet. L. United States, p. 142,) 14th October, 1837, chap. 5, (5 Pet. L. United States, p. 204,) and the act of 23d August, 1842, chap. 185, (5 Pet. L. United States, p. 511.) They have been further recognized and applied to indemnity for losses and damages to houses and buildings in consequence of their being used or occupied under order of an officer of the United States in command, by the general acts passed 9th April, 1816, sec. 9, (1st sess., 14th Cong., chap. 40, 3 Pet. L. United States, p. 263,) 3d March, 1817, sec. 1, (3 Pet. L. United States, p 397,) and 3d March, 1825, chap. 66, (4 Pet. L. United States, p. 123.)

And, among many other special acts, I beg leave to refer to the following, as recognizing the same principles of indemnity for losses and damages incurred for the public safety.

First. The claim of John Addams, of Plattsburg, New York, for damages sustained in consequence of his property having been used by United States forces, was paid by an act of Congress, passed 8th May, 1840, (1st sess., 26th Cong., 6 Pet. L. United States, p. 799,) a report having been made by the Hon. Elisha Whittlesey in 1836, (see House report No. 520, 2 vol. 1st sess., 24th Cong.,) in favor of his demand for damage to his land by a fort having been built on it, to his meadow and pasture which was trodden down, and to his buckwheat destroyed. These injuries being the first, fifth and sixth items of his account.

Second. The claim of James F. Sothern for the value of his tobacco, which was lost, destroyed, or carried away at his houses in consequence of his premises being occupied by the American forces under order of their commanding officer, was paid by act of Congress, passed 3d March, 1849, (see chap. 180 Acts, 2d sess., 30th Cong.,) upon a

favorable report made by Hon. Reverdy Johnson, (see Senate report No. 127, 2d sess., 29th Cong., and Senate report No. 57, 1st sess., 30th Cong.,) and the accounting officers were directed to ascertain and pay the *then value* of his tobacco.

And lastly, in the claim of Charles J. Catlett, before mentioned, the Congress again recognize the principles of the acts of Congress, both general and special, which requires the government to protect its citizens against *its own acts and their consequences.* A report was made in this case by the Finance Committee, 13th January, 1835, (see Senate report No. 55, 3d vol., Senate Doc., 2d sess., 23d Cong.,) in which it was recommended that indemnity should be made for so much of the claim as arose from damages sustained in consequence of the acts of the government, or its officers, at the warehouses at Magruder's, Nottingham, and Cedar Point; and a bill was reported for a settlement by the accounting officers, "on just and equitable principles"—the only difficulty the committee felt, being to determine whether the war or peace price should govern in making this settlement. This bill was amended, and, as amended, was passed and approved 2d July, 1836, and directed a settlement to be made "upon the principles of the acts of 9th April, 1816, and 3d March, 1817."

In the settlement of this case the Third Auditor appears to have thought that a case was not made by the proof that would come within the principles of the acts of 1816 and 1817, and referred it to the Second Comptroller, on 30th December, 1836, for his opinion, (see House report No. 211, 3d session 27th Congress, dated 22d February, 1843, pages 7 to 10,) and Second Comptroller concurred with Third Auditor. Mr. Catlett then obtained from Hon. D. Webster, on 27th February, 1837, a letter (*ib.*, page 11) to the Second Comptroller, stating that the act of 2d July, 1836, was intended as a positive enactment for relief, and not a vain exercise of legislative power; and in September, 1841, Mr. Catlett applied to the President of the United States, under whose order a report was made to him from Third Auditor's office, on 20th September, 1841, in relation to the case; and on 21st and 23d September, 1841, the President (see *ib.*, page 14,) advised a re-examination of the case by the Third Auditor, who again made a report to the Second Comptroller on 28th September, 1841, against the allowance of any part of the claim. On 28th September, 1841, Mr. Crittenden, then Attorney General, examined the case under order of the President, and again expressed his opinion that Charles J. Catlett was, under the act of 2d July, 1836, entitled to relief upon the principles of the acts of 9th April, 1816, and 3d March, 1817, (*ib.*, page 21,) and the Second Comptroller thereon ordered a settlement to be made by Third Auditor, which was accordingly done at the values of the period of the war.

I would also call the attention of the committee to the fact that an inquiry was by the House of Representatives ordered to be made in regard to the expediency of passing a further and general act by the Congress for indemnity in this class of cases; and a report was made by the committee in 1828, (see House Report No. 90, 2d vol., 1st session 20th Congress,) and that it was judged and so reported to be

most advisable that each case rest on its own special circumstances, because of their great variety.

Upon the evidence by which the claim of Mr. Catlett was settled, and upon the principle of justice on which the government has universally acted in protecting its citizens from its own acts and their consequences, it is now asked that the accounting officers may be authorized and directed (from the evidence now on file in the records of the government, and such other evidence as may be produced) to ascertain the quantity and the then value of the tobacco belonging to Messrs. Hodges & Lansdale, and Wm. Wilson & Son, at the warehouses which was burnt, destroyed or carried away by the British or American forces in 1814, in consequence of the use and occupation of these warehouses for attack upon, and defence from, the enemy, and to pay the value so ascertained to said claimants, their successors or assigns, out of any money in the treasury not otherwise appropriated.

All of which I beg leave, as counsel for the petitioners, to submit.

JOHN S. McCULLOH.

The Honorable THE COMMITTEE OF CLAIMS
Of the Senate.

To the honorable the Committee of Claims of the Senate:

The undersigned, as counsel for Messrs. Hodges & Lansdale and William Wilson & Son, beg leave respectfully to submit herewith, on behalf of the petitioners, copies certified on 5th April, 1850, by Third Auditor of Treasury, to be correct transcripts of the testimony of George W. Biscoe, 28th April, 1828; B. J. Semmes, 27th February, 1832; Hon. D. Jenifer, 27th February, 1832; George W. Biscoe, 27th February, 1832; Jesse Selby, 20th December, 1833; James Baden, 20th February, 1835; heretofore produced and filed at the settlement made on 29th September, 1841, by Report No. 13280, in the office of the Third Auditor of the Treasury Department, under the act of Congress approved 2d July, 1836, for the relief of Charles J. Catlett, which testimony relates to the destruction of the tobacco in the warehouses at three places, to wit: Nottingham, at Magruder's, on the Patuxent river, and Cedar Point, on the Potomac.

By this evidence it is proved that under the orders of General (then Major) Biscoe, as commander of the Maryland militia, part of the tobacco then in the warehouse was used to make a breastwork, behind which he planted cannon, and under its cover fired on the British barges, and forced them to retreat; and that after this the British took most of the tobacco from this warehouse, and kept possession of the waters of the river as high as this place until the burning of the Capitol at Washington.

That at warehouses at Magruder's, on the Patuxent, First Captain Joshua Naylor, acting under General Biscoe's orders, on the 17th June, 1814, stationed his troops behind the warehouses, thirty yards from the shore, and as soon as the British barges came within sight he opened under this cover a fire on the enemy, and continued it for an hour or two; and that as soon as his ammunition was expended he

ceased his fire and retreated, and the British landed and set fire to the warehouses and burned them.

That at Cedar Point, on the Potomac, the militia, under command of General Stewart, were ordered to the warehouses, (which, when filled with tobacco, are cannon proof, and completely protected the troops,) there to make an attack on the British schooners which were anchored off the warehouse; that after several cannon shot fired the enemy set fire to the warehouse and leveled it to the ground, with all the tobacco then in the house, of which the honorable D. Jenifer says he was an eye-witness, being aid to General Stewart.

This evidence shows that the warehouses, by being filled with tobacco, were thereby rendered cannon-proof, and, being close to the water's edge, afforded protection and cover for attack on the enemy, and caused their destruction by the British.

Messrs. Hodges and Lansdale have the original tobacco notes which establish their claim, and Messrs. William Wilson & Son have heretofore had their notes filed in the Department of State, and they will probably be found with the testimony and claims produced and left with the proceedings of the commissioners under the treaty of Ghent.

Relief and indemnity is asked by the petitioners, on the ground that under the orders of military officers of the United States the warehouses, when filled with tobacco, and the tobacco stored in them, were both used, and chiefly the tobacco, because of its being cannon-proof, for the shelter or cover of the American troops in attacking the British vessels when within gun-shot of the covers, and because, in consequence of these attacks under such cover, the enemy destroyed, burnt and carried off the tobacco.

Such destruction, in consequence of the use of the tobacco by us, under order of officers in command, brings the claim of the petitioners within the principles which have been always acted on, both in general and special acts of Congress for indemnity to citizens, where property has been taken or destroyed for the public welfare and protection.

These principles have been recognized in reference to wagons, carts, horses, &c., which have been lent or destroyed when in public service, either by agreement or by impressment, as will be evident by referring to the general acts of May 4, 1822, c. 48, (3 Pet., Laws U. S.) and May 26, 1824, c. 187, (4 Pet., Laws U. S., p. 70,) relating to the Seminole war, the acts of June 18, 1837, c. 5, (5 Pet., Laws U. S., p. 142,) October 14, 1837, c. 5, (5 Pet., Laws U. S., p. 204,) and the act of August 23, 1842, c. 185, (5 Pet., Laws U. S., p. 511.) They have been further recognized and applied to indemnity for losses and damages to houses and buildings in consequence of their being used or occupied under order of an officer of the United States in command, by the general acts passed April 9, 1816, sec. 9, (1st session 14th Congress, c. 40, 3 Pet., Laws U. S., p. 263,) March 3, 1817, sec. 1, (3 Pet., Laws U. S., p. 397,) and March 3, 1825, c. 66 (4 Pet., Laws U. S., p. 123.)

And among many other special acts, we beg leave to refer to the following as recognizing the same principles of indemnity for losses and damages incurred for the *public safety*.

First. *The claim of John Addams* was paid by an act of Congress,

passed May 8, 1840, (1st sess. 26th Congress, 6 Pet., Laws U. S., p. 799,) a report having been made by the Hon. Elisha Whittlesey, in 1836, (see House Report, No. 520, 2d vol., 1st sess. 24th Congress,) in favor of his demand for damages to his land, by a fort having been built on it, to his meadow and pasture which was trodden down, and to his buckwheat destroyed. The injuries being the 1st, 5th and 6th items of his account.

Second. The clain of James F. Sotheron, for the value of his tobacco, which was lost, destroyed or carried away at his houses in consequence of his premises being occupied by the American forces under order of the commanding officer, was paid by act of Congress, passed and approved on March 3, 1849, (see c. 180, act 2d sess. 30th Congress,) upon a favorable report made by Hon. Reverdy Johnson, (see Senate Report, No. 127, 2d sess. 29th Congress, and Senate Report, No. 54 1st sess., 30th Congress,) and the accounting officers were directed to ascertain and pay the *then value* of his tobacco.

Third, and lastly. In the claim of Charles J. Catlett, before mentioned, the Congress again recognize the principle of the acts of Congress, both general and special, which requires the government to protect its citizen against *its own acts and their consequences.* A report was made in this case by the Finance Committee January 13, 1835, (see Senate Report No. 55, 3d vol. Senate documents, 2d session, 23d Congress,) in which it was recommended that indemnity should be made for so much of the claim as arose from damages sustained in consequence of the acts of the government or its officers at the warehouses at Magruder's, Nottingham, and Cedar Point, and a bill was reported for a settlement by the accounting officers "on just and equitable principles;" the only difficulty the committee felt being to determine whether the war or peace price should govern in making this settlement. This bill was amended, and as amended was passed and approved July 2, 1836, and directed a settlement to be made "upon the principles of the acts of April 9, 1816, and March 3, 1817."

In the settlement of this case the Third Auditor appears to have thought that a case was not made by the proof that would come within the principles of the acts of 1816 and 1817, and referred it to the Second Comptroller on the 30th December, 1836, for his opinion, (see House Report, No. 211, 3d sess. 27th Cong., dated February 22, 1843, pages 7 to 10,) and Second Comptroller concurred with Third Auditor. Mr. Catlett then obtained from the Hon. D. Webster, on the 27th February, 1837, a letter (*ib.*, page 11,) to the Second Comptroller stating that the act of 2d July, 1836, was intended as a positive enactment for relief and not a vain exercise of legislative power; and in September, 1841, Mr. Catlett applied to the President of the United States, under whose order a report was made to him from Third Auditor's office, on the 20th September, 1841, in relation to the case, and on the 21st and 23d of September, 1841, the President (see page, *ib.* 14) ordered a re-examination of the case by the Third Auditor, who again made a report to the Second Comptroller, on 28th September, 1841, against the allowance of any part of the claim. On 28th September, 1841, Mr. Crittenden, then Attorney General, examined the case under order of the President, and again expressed his opinion that Charles J. Catlett was, under the act of 2d July, 1836, en-

tled to relief upon the principles of the acts of 9th April, 1816, and 1 March, 1817, (*ib.*, p. 21,) and the Second Comptroller thereon ordered a settlement to be made by the Third Auditor, which was accordingly done at the values of the period of the war.

We would also call the attention of the committee to the fact, that inquiry was, by the House of Representatives, ordered to be made in regard to the expediency of passing a further general act by the Congress for indemnity in this class of cases, and a report was made by the committee in 1828, (see House reports, No. 90, 2d vol., 1st session, 20th Congress,) and that it was judged, and so reported to be most advisable, that each case *rest on its own special circumstances, because of their great variety.*

Upon the evidence by which the claim of Mr. Catlett was settled, and upon the principle of justice on which the government has uniformly acted in protecting its citizens from its own acts and their consequences, it is now asked that the accounting officers may be authorized and directed (from the evidence now on file in the records of the government, and such other evidence as may be produced) to ascertain and estimate the quantity and the then value of the tobacco belonging to Messrs. Hodges & Lansdale and William Wilson & Son, at the Maryland warehouses, which was burnt and destroyed, or carried away, by the British or American forces, in 1814, in consequence of the use and occupation of those warehouses for attack upon, and defence from, the enemy, and to pay the value so ascertained to said claimants, their successors or assigns, out of any money in the treasury not otherwise appropriated.

All of which we beg leave, as counsel for the petitioners, most respectfully to submit.

JAMES M. BUCHANAN.
JOHN S. McCULLOH.

To the Senate and House of Representatives of the United States in Congress assembled:

The petition of Hodges & Lansdale, late of the city of Baltimore and State of Maryland, respectfully states:

That your petitioners, in the year eighteen hundred and fourteen, had a considerable quantity of tobacco, which was bought by them from time to time, and was deposited in the public warehouses known as Magruder's and Nottingham, in Prince George's county, as Hunting creek and Lower Marlboro', in Calvert county, and Benedict, in Charles county, on the Patuxent river.

That in 1814 the flotilla of Commodore Barney, under military the orders, occupied the waters of the Patuxent river, in order to aver threatened attack of the British forces on Washington city; that your petitioners are informed and state, that the British forces attacked the warehouses, and burnt, destroyed, and took away the tobacco that was in them, in consequence of the military occupation by the American troops of the waters of the Patuxent, and in consequence of the use by

the American troops of the tobacco and the warehouses as means of means of military defence, and for attack on the British forces, the tobacco contained in the warehouses being proof against cannon shot.

For the tobacco so used for military purposes, and which was taken and destroyed by the British forces, your petitioners have never been remunerated by the United States, and they ask that the matter of this petition may be referred to the appropriate committee, to report upon such evidence as your petitioners may be able to furnish, in order that they may be relieved.

HODGES & LANSDALE,
By BENJ. M. HODGES, *the survivor.*

—

STATE OF MARYLAND, } *ss.*
Baltimore city.

On this twenty-ninth day of December, eighteen hundred and forty-nine, appears before the subscriber, a justice of the peace of the State of Maryland in and for Baltimore city, Benjamin M. Hodges, aforesaid, and makes oath in due form of law that, to the best of his knowledge, information, and belief, the matters above stated are true.

JOHN J. SNYDER.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 45.

RINALDO JOHNSON AND ANN E. JOHNSON—LEGAL REPRESENTATIVES OF.

[To accompany bill S. No. 255.]

JANUARY 9; 1857.

Mr. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 255, for the relief of the legal representatives of Rinaldo Johnson and Ann E. Johnson, with the accompanying papers, have had the same under consideration, and now report:

The petitioners, for whose relief the bill in question was framed, set forth, substantially, that a large quantity of tobacco belonging to those whose representatives they are, and which was stored in certain warehouses at Magruder's Ferry, in the State of Maryland, was destroyed by the British forces during their invasion of Maryland, in the war of 1812, because those employed by the government of the United States in the military defence of the country availed themselves of the warehouse in which it was contained as a shelter from the fire of the enemy; and that in consequence of this, the government of the United States is bound to make good their loss. The claim of the petitioners, then, is one for compensation for property destroyed in war by the public enemy; and the question whether there is any principle either of public law or national policy which obliges or requires a government to make the compensation asked for, is presented for decision.

The first thing that strikes one who enters upon such an inquiry, is the fact that there is nothing to be found in the works of writers upon the public law of nations which is calculated to throw any light upon the subject, or to aid in arriving at a proper conclusion upon it. Wars have been carried on in every age of the world, and every question which can grow up between contending states, either as to the mode of carrying it on, or as to the rights and obligations to which its existence or its conduct might give rise between belligerent powers, has been again and again discussed by the most eminent statesmen and distinguished jurists with all the ability and penetration that their nature and importance demand; but so far as we have been able to discover, there *has been no instance*, in any age or nation, in

which there has been a reference by any writer, of greater or less authority, to the existence of such a right, on the part of the citizen, upon a state, as that involved in the petitioners' claim. And this would seem to be precisely what should have been expected from the principles of public law, as universally recognized among all civilized nations from the earliest times to the present day.

A war, whether offensive or defensive, is regarded as undertaken by the sovereign power for the common good, and all the citizens of a country are considered as parties to the war, and equally interested in it. Whenever war exists, it has been the invariable practice of states to consider the property of all the individuals of a nation as the property of the nation; and, as a necessary consequence of this, it has always been held that the existence of war gave the sovereign the right to take the persons and confiscate the property of the enemy wherever found. This may seem the doctrine of a barbarous age, and be thought in conflict with the plainest dictates of justice. But it is, nevertheless, the doctrine which has been everywhere received in modern times throughout Europe, and which has not only been recognized by our own diplomatists and statesmen, but has been repeatedly sanctioned by unanimous decisions of our Supreme Court in cases brought before them for their adjudication.

From the nature of war, it is impossible that it should be carried on between two nations without giving rise to the destruction of private property. In some of the wars of modern Europe whole provinces were laid waste with fire and sword, and multitudes of peaceful citizens were reduced to beggary by the wanton and unprovoked destruction of their property; whilst in others the populations of villages, towns, and cities were subjected to forced contributions of money or supplies by the invading forces; but history presents no instance in which the invaded states gave any indemnity to the sufferers. When the laws and usages of war are violated by a belligerent, it is an admitted principle of the law of nations that the other party to the war has a right to claim an indemnity. Such claims have sometimes been recognized by treaty; and there may have been instances in which one nation has exacted from another the value of the property of its citizens which had been destroyed in violation of the rules of legitimate warfare, and paid it over to the sufferers. When, however, no such indemnity has been obtained, no European state has ever made any compensation out of its own coffers to its citizens for the losses incurred by them in war from the destruction of their property by the enemy.

Nor is this to be wondered at. It is now the practice of all nations to capture the private property of non-combatant enemies, wherever found upon the high seas, and to condemn it as lawful prize of war in favor of the captors. In the wars of the latter part of the last century, and in the early part of this, hundreds of millions in value of the property of peaceful citizens engaged in useful traffic, and who had no connexion, immediate or remote, with the wars going on, were captured upon the ocean and converted to the enemy's use, and yet no compensation of any kind was ever made to those who were subjected to these losses by the different European powers. "To the

victor belongs the spoils," was the maxim of the ancient law of nations, and the maxim applied to captures made on the land as well as to those on the sea until very recently; and when the practice which gave rise to the maxim was abrogated in later times, first, by positive treaty stipulations between particular states, and then by so universal a consent among civilized nations that this partial abrogation became part and parcel of the public law, it did not follow, because a state denied the general right to capture private property on land, and make it prize of war, that it therefore imposed upon itself an obligation to indemnify the citizen whose property was captured and carried away or destroyed by a public enemy in violation of the acknowledged laws of war.

In absolute governments no disposition to indemnify subjects whose property had been destroyed or carried away by the enemy, whilst engaged in war, would at any time be likely to exist; nor does it seem possible that any notion that it would be proper to do so would ever originate even in republics, when they are surrounded by powerful neighbors with whom they had been before embroiled, and upon whose moderation, justice, and good faith there could be no firm reliance. If a nation has such neighbors, she is perpetually in danger of being involved in war. No wisdom or forbearance on her part can exempt her from it. It may at any time be forced on her by the lust of dominion, or even by the caprice of monarchs; and when that is the case, and the nation is obliged to take up arms in self-defence, and wage perhaps a long and expensive war, which has tasked all her resources to their very uttermost, it is inconceivable that any people, on coming out of such a contest, should attempt to impose still further burdens on themselves to repair the particular injuries which had fallen upon individuals in the course of its prosecution. A just war is always the result of necessity; and when the evils that inevitably follow in its train fall upon particular individuals, it has hitherto been the judgment of the world that, like the ordinary dispensations of providence upon mankind, they should be borne by those upon whom they have fallen.

Notwithstanding the importance of the subject, and the interest which sufferers from the ravages of war must have excited in every country that has been subjected to its horrors, we are not aware that it ever received the serious attention of the legislative department of any government until it was brought to the notice of the Congress of the United States by the sufferers in the war of 1812 upon the northern frontier soon after that war was brought to a close.

The position of the United States at that time was peculiarly favorable to the fair consideration of the whole matter, whilst the situation of the claimants themselves was such as to enlist in their behalf the warmest sympathy of all those who were required to decide upon their claims. We had but a single neighbor upon the North American continent with whom it was possible we could have a contest, and with that neighbor we had just concluded a treaty of peace under circumstances which justified the belief that there was very little likelihood that the peaceful relations then established with her would ever again be disturbed; *so that there was* no room for the apprehension

that if anything were paid to-day it was probable more would have to be paid to-morrow.

After the fullest discussion, the act entitled "An act to authorize the payment for property lost, captured, or destroyed by the enemy while in the military service of the United States, and for other purposes," approved on the 9th of April, 1816, was passed by Congress. This act provided for making compensation—

First.—To particular classes of persons for certain kinds of moveable property—as, for instance:

1. To volunteers or draughted militia men, whether of cavalry, mounted riflemen, or infantry, who have sustained damage by the loss of their horses "killed in battle;" or which had died "in consequence of wounds therein received;" or "in consequence of failure on the part of the United States to supply such horses with sufficient forage while in the military service of the United States;" or "in consequence of the owner being dismounted, or separated and detached from the same by order of the commanding officer, or in consequence of the rider being killed or wounded in battle;"

2. To persons who acted in the military service of the United States as volunteers or draughted militia men, and had furnished themselves with arms and military accoutrements, and had "sustained damage by the capture or destruction of the same, without any fault or negligence of" theirs;

3. To those who had "sustained damage by the loss, capture, or destruction by the enemy of any horse, mule, ox, wagon, cart, boat, sleigh, or harness, while such property was in the military service of the United States, either by impressment or contract, except in cases where the risk to which the property would be exposed was agreed to be incurred by the owner, if it should appear that such loss, capture, or destruction was without any fault or negligence on the part of the owner," or who had sustained damage by the death of any such horse in consequence of failure on the part of the United States to furnish the same with sufficient forage while in the service;" And,

4. To those whose property had been impressed or taken by public authority "for the use and subsistence of the army," and had "been destroyed, lost, or consumed:" And,

Second.—To the owners of houses or buildings who had sustained damage by their destruction by the enemy, "while the same were occupied as places of military deposite, under the authority of an officer or agent of the United States," if it appeared "that such occupation was the cause of their destruction."

The slightest examination of this act will at once make it apparent that it was the intention of the national legislature to limit the compensation for property "captured, lost, or destroyed while in the military service of the United States:"

1st. To the arms and accoutrements required for the equipment of the volunteers and militia men, and to their horses, when they served as mounted men; to the animals, vehicles, and other means of transportation actually employed to facilitate the movement of troops; and to the provisions and other supplies necessary to their support. And—

2d. To such buildings as were, at the time of their destruction, actually occupied by the military forces of the United States in such a manner as to impress upon them a public character, and justify an enemy in considering them as making a part of the military defences of the country.

The act provided for the appointment of a commissioner to decide upon all cases arising under it, subject to such rules and regulations as the President should prescribe; and limited the presentation of such claims, and the authority of the commissioner to decide them, to two years from the passage of the act. The adjudications of the commissioner upon the claims submitted to him, whether in favor of, or adverse to, the claim of the applicant, were directed to be entered by his clerk in a book to be provided for the purpose; and it was declared that when the adjudication was in favor of the claimant, he should be entitled, upon the production of a copy of the adjudication duly certified by the clerk of the commissioner, "to payment of the amount thereof at the treasury of the United States."

Very soon after the passage of the act, the commissioner provided for was appointed, and entered upon the discharge of the duties imposed on him. On the 7th of September following, the Secretary of War informed the commissioner that the President had "been pleased to direct that the occupation of houses and buildings for the military force of the United States" was embraced in the ninth section of the act—the section providing for the payment of damages sustained by the destruction of houses or buildings by the enemy. This was a liberal and fair interpretation of the act. But it was not long, however, after the commissioner began the investigation of particular claims, before it was discovered that he was disposed to give a very loose and large interpretation to the act; and, in consequence, as soon as this disposition had manifested itself, his proceedings were subjected to the Executive scrutiny.

On the 21st of October he was informed, through the Secretary of War, that the act did "not embrace the case of officers of the regular army, and that the property which a regular officer may have taken with him in the service, or which he may have been required by law to keep, is not comprehended by the terms "impressed or by contract;" that the provisions as to the loss of horses or other animals only extended "to losses resulting from the acts of the enemy, or from the failure of the government to supply the necessary forage;" that the provisions of the act relating to the destruction of houses or buildings only extended "to cases of destruction of property by the enemy, which are justifiable by the laws of civilized warfare;" and that "the occupation of houses or buildings as places of military deposite or by an armed force, must be continued up to the time of the destruction;" and "that the occupation of houses or buildings by an armed force, for a night, upon a march," was not within the meaning of the act, "unless in the immediate presence of an enemy;" and that the act did "not extend to the case of consequential injury resulting from the destruction of houses or buildings;" and that no compensation could, "therefore, be allowed for the destruction of houses or *buildings not occupied as* a military deposite, or by a mili-

tary force." On the 1st of November he was informed, through the War Department, that the provisions of the act would "not justify the payment of claims for partial injuries to oxen or horses," and was requested to suspend all decisions relating to claims for the destruction of houses or buildings. And on the 6th of December, immediately after the meeting of Congress, the President, by message, informed the two houses that the portion of the act (the ninth section) relating to the destruction of houses or buildings "by the enemy, while the same were occupied as a military deposite under the authority of an officer or agent of the United States," having received a construction "giving it a scope of great and uncertain extent," he had thought proper that proceedings relative to claims under that part of the act should be suspended "until Congress should have an opportunity of defining more precisely the cases contemplated by them." The President then recommended the subject to their consideration, and observed that "they would have an opportunity, at the same time, of considering how far other provisions of the act" might be rendered "more clear and precise in their import."

The House of Representatives, on the day the message was sent to them, adopted a resolution calling for all the proceedings of the commissioner. These proceedings were transmitted to the House, by the President, on the 21st day of December, after he had instructed the commissioner to make no final decisions upon any of the claims before him, or that might be exhibited under the act, but to limit his action to preparing and arranging all such cases for decision when it should be deemed proper. Congress then proceeded to consider the whole subject, and the act entitled "An act to amend the act 'authorizing the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes,' passed the ninth of April, one thousand eight hundred and sixteen," approved March 3, 1817, was the result of their deliberations.

This act declared that the ninth section of the act of 1816 should be construed "to extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposite for military or naval stores, or as barracks for the military forces of the United States," and thus not only excluded all consequential damages resulting from the destruction of a house or building, within the true intent and meaning of the act—such as that growing out of the loss of movable property contained in it at the time of the destruction, or of the loss of other buildings not occupied by authority of the United States, fired at the same time by the enemy—but had the effect of restraining the act to the single case of the occupation of houses or buildings by the military force of the United States "as barracks," in opposition to the broader construction of the act given by the President on the 7th of September, 1816, through the War Department. But this was not all. To prevent any undue extension of the provisions of the original and of the amendatory act, the power of deciding in the last resort was entirely taken away from the commissioner by the fifth section of the act, which provided that all claims allowed by the commissioner should be reviewed by the Secretary of War.

The claims presented to the commissioner under these acts had not all been acted on when his authority was terminated by the limitation of time contained in the act of 1816; and by an act of Congress approved on the 20th of April, 1818, all the claims then remaining in the office of the commissioner, and not acted on finally by him "before the 9th of April, 1818," were transferred to the office of the Third Auditor of the Treasury Department, and the Auditor authorized to adjudicate upon them, subject to the same "rules, regulations, and restrictions" as had been before prescribed to the commissioner.

The action of the Third Auditor did not, it seems, give satisfaction to the numerous claimants under the acts in question. They continued to direct the attention of Congress to the subject, until at last a select committee was raised in the House of Representatives, with instructions to inquire what further legislative provisions were "fit and necessary to carry into effect the provisions of the act of Congress passed March 3, 1817, entitled "An act to amend the act authorizing the payment for property lost, captured, or destroyed by the enemy while in the military service of the United States, and for other purposes, approved April 9, 1816." This committee made their report to the House on the 5th of April, 1824. The report was elaborate and eloquent. It displayed in the warmest language the merits of the sufferers upon our northern frontiers, on the borders of the Chesapeake and in Louisiana, and awakened in the highest degree the sympathies of members by picturing in the liveliest colors the scenes of horror and dismay which everywhere attend upon the footsteps of war; and by holding up for their contemplation the distress and wretchedness of the claimants, who in some instances were men, it was said, who had been bereft of their last worldly effects by the ravages of the enemy—and in others were widows and orphans of those who had fallen victims of this cruel invasion, and who had been left actually without a shelter for their heads, and without the means of subsistence.

This committee asserted that it was the duty of every government, and, of course, perfectly equitable, and even strictly just, to relieve, as far as possible, those who had been injured or ruined by the stroke of the public enemy; and that it was peculiarly incumbent upon a republic like ours—the principle and base of whose political existence was that the burdens and benefits of its operations should be equally borne or enjoyed—to adopt a policy on this subject which would have the effect of apportioning the losses incident to war among all the members of the community. And this, they intimated, was the intention of Congress in its previous legislation. It was said to have been well known, before and at the time of passing the law referred to, that the inhabitants of the Niagara frontier, in the State of New York, and others residing on the margin of the Chesapeake, who had suffered ruinous losses in the destruction of their property by the enemy, were urging their claims for an indemnification upon Congress; and that but little doubt existed with the committee that Congress contemplated by the law to extend relief to those unfortunate sufferers; that whatever doubt has since been created of the design of Congress in this respect, *none was at that time* entertained by the claimants;

that as soon as effect was given to the law, by the appointment of a commissioner, almost every claim of this nature was immediately presented to him for adjudication; that the commissioner, whose local situation qualified him to judge of the object of the law, after a faithful and laborious investigation of the cases arising from the destruction of the enemy, decided that they were generally embraced within its provisions; but that, while the commissioner was proceeding, in pursuance of this opinion, to examine and adjudge upon the individual claims, and after the allowance and payment of some of them, his progress was unexpectedly arrested by an order of the President of the United States to suspend further adjudications upon them.

The whole subject then came up for consideration before Congress, supported by an able report in favor of the pretensions of those of the claimants who believed that compensation ought to be made to the owners of all of the property destroyed by the enemy in the war of 1812. Congress, however, did not approve the views of the committee. The whole matter was repeatedly brought up in the House, and after undergoing discussion in a debate distinguished for the ability and statesmanship displayed in it by many eminent persons who still live in the memories of the American people, and which was continued through eight whole days, (in December, 1824, and January, 1825,) the act entitled "An act further to amend the act authorizing payment for property lost, captured, or destroyed by the enemy while in the military service of the United States, and for other purposes," was passed by both houses, and was approved and became a law on the 3d of March, 1825.

This act (4 Statutes at Large, 123) provided that any person having a claim for a building destroyed by the enemy, under the 9th section of the act of 1816, and of the act of 1817 amending it, which had been presented to the commissioner appointed under the act of 1816, "at any time before the 10th day of April, 1818, and which was not paid under said acts, nor finally rejected" by the commissioner, might, within nine months, present it to the Third Auditor of the Treasury for examination and adjustment; and then authorize the Auditor "to assess the damages and certify the amount for payment" only if the building, for which damages were claimed, had been "at the time of its destruction occupied, by order of any agent or officer of the United States, as a place of deposite for military or naval stores, or as barracks for the military forces of the United States." And thus it is seen that the Congress of the United States has, at only three periods when the subject has been brought before it and considered as a great public question, determined that it would make no compensation to individuals for the property of which they have been deprived by the violence of war, unless for those claims of moveables which are essential to the equipment of the soldier, or were indispensable to the movement of troops or for their support, and which were lost, captured, or destroyed whilst actually in the military service of the United States; and for houses or other buildings which had been taken possession of and occupied for military purposes by the authority of the United States, and which were thus occupied at the very time they were destroyed.

And this determination, in the view of your committee, was right, both in what it awarded and in what it refused.

The government of the United States is, by the Constitution, invested with the power to declare and carry on or wage war, and, as an incident to that power, it has the undoubted right to take the property of its citizens which may at any time be discovered to be indispensable to the success of its military operations, wherever it is found. All such property, however, is taken for the public use. The owner is deprived of it, if it be consumed or destroyed before this use ceases, by the act of the government; and in such an event, under the public law of nations, the obligation of the government to indemnify the citizen or subject has always been regarded as complete. With us, however, the citizen is not left dependent upon the principle of the public law of nations. The obligation is recognized in the fundamental law of the nation, and the government is bound to pay its value to the owner under that clause in article 5 of the amendments to the Constitution, which declares that private property shall not be "taken for public use without just compensation." This is the principle of the acts of 1816, 1817, and 1825, relating to this subject. Buildings destroyed by the enemy while actually occupied for military purposes by authority of the United States, and the arms and accoutrements of the volunteers and militiamen; the animals and vehicles, and other means of transportation employed in facilitating the movements of troops; and the provisions and other supplies impressed for the use of the army, are all embraced in it.

But it is otherwise with all other property, whether it consists of houses or other buildings, not actually occupied by the public authority for military purposes, or of moveables, such as household furniture, gathered crops, or merchandise, even if these were contained in buildings actually occupied for military purposes by authority of the United States at the time of their destruction, and were destroyed in them. We know it has been said by some that they were unable to recognize the force or propriety of the distinction which makes the government liable for real property destroyed by the enemy, and exempts it from liability for the moveable property destroyed in it—which makes it pay for a house burned by the enemy, and refuses to pay for the personal property burned in the house. Your committee have no such difficulty.

The distinction is obvious and necessary. A house cannot be carried off at will. Personal property, on the other hand, under the control of the owner, is susceptible of removal. It is in his power to carry it where he pleases; and when the district of country where it exists becomes exposed to the incursions of an enemy, or the spot where it is deposited is occupied by a military force, or for military purposes, and therefore is liable to become the scene of combat, it is not only his right, but it is his duty, to remove it from the place of danger. When a nation is engaged in war, it is universally conceded that every citizen is required to do all in his power to injure the public enemy. But it is just as true that it is also required of him to do all in his power to prevent injury being done to his own country. The loss of the *property of its citizens is* an injury done to the coun-

try. If one has it in his power to rescue the property of his fellow citizen from impending destruction and fails to do so, he violates a great duty which he owes to his country. If his own property is exposed to peril from the operations of war, and he fails to employ the means at his disposal to remove it beyond the reach of danger, he not only violates a great public duty which he owes to the whole country, but he violates a duty he owes to himself; and if it is destroyed in the exposed situation where he left it, it is the result of his own want of proper care and exertion, and he can have no right to be indemnified against the consequences of his own negligence.

In the opinion of your committee, there is not only no principle of law or equity which requires that payment should be made to the sufferers for such losses, but it seems to them that their payment is forbidden by the best interests of the country, and the dictates of a wise policy.

Peace is essential to the progress and prosperity of nations. During its continuance their material resources are developed. The intercourse between them growing out of the necessities of trade, the appetite for foreign travel, and the desire to find new scenes for observation and new opportunities for intellectual improvement, favors the diffusion of knowledge, advancement in all the useful arts of life, and the spread of those inventions which have done so much to augment the productions of the earth or of labor, which contribute to the sustenance or comfort of mankind. In the present age of the world wars, even on the part of monarchical governments, can scarcely be engaged in unless favored by popular sentiment; and hence sound policy requires that no measure should ever be adopted by any nation which would be likely to promote the growth of such a sentiment.

If this rule be an important one for monarchies, how much more important must it be in a government like ours, in which war is the esult of the popular will alone. Nothing disposes communities to peace so much as the apprehension of loss by war. If it is the ettled principle of a people that no compensation whatever shall be made to those who suffer from its ravages, there will be no war, when that question depends upon the will of the people, as long as it can be avoided with honor. The influence of this apprehension is universal; and yet its strength and effects are not always visible to the common observer. The history of the world in our day, however, when regarded with a view to those objects, will make it sufficiently apparent. The causes for a war between some of the great maritime powers have, at different times within the last twenty years, been far greater than those which recently embroiled Russia with England and France; and yet there was no war. And why was this? Millions of property, if there had been war between them, would have been exposed to capture on the ocean; and for such captures no one has ever even pretended that the owners could have any claim for compensation. The great and immediate evils of war would, as a matter of course, in a maritime country, have fallen upon commerce. And, therefore, whenever there was the slightest reason to believe that the peaceful relations of these nations were about to be endan-

gered, the commercial classes took the alarm. These classes exist in all civilized communities, and wherever there is the most wealth, and men are accumulated in the greatest masses, there they are the most powerful. Their voices are not only listened to with respect by those who are dependent on them, or are engaged as their co-workers in the multifarious operations of trade, but they are loud and potential enough to penetrate the council chambers of princes, and command their attention and obedience.

But this is not all. An adherence to the rule spoken of is beneficial in its tendencies during the existence of war itself. The great object of belligerents is to weaken and overcome their enemy; and as in modern times money is the sinew of war, if it were the practice of a government to pay to its citizens the value of their property destroyed by an invading force, it would at once become the interest of the enemy to penetrate the country at every assailable point, and to lay it waste with fire and sword. Every act of dastardly and secret rapine, and of wanton and barbarous destruction of private property, would tend as much to the exhaustion of the resources of the State as the bold and open blows struck in honorable warfare at the men embodied and in military array to fight her battles. War would, under such a state of things, soon lose everything of a noble and lofty character: ruffians, pilferers, and thieves would be its fit instruments, and it would become a game of wanton outrage and of barbarous violence and destruction.

If this be certain, and a refusal to pay for property destroyed by the enemy is calculated to diminish the evils of a foreign invasion, it is also certain that such a refusal will have a direct tendency to promote the making of a vigorous defence against it. If every citizen knows that he has nothing to hope for from the State by way of indemnity for losses inflicted on him by the public enemy, and that when the country is invaded he must look to the repulse of the invading force or to its forbearance for the safety of his property, there can be no doubt as to the result. The private interest of the citizen will coincide with his public duty. He would fight, if need be, with the invading enemy in defence of the country; and as every blow he struck would be for the protection of his own property also, the country would be assured that he would do in her cause all that he had the courage and capacity to do for himself.

There is nothing in the circumstances of this case which entitles the claim made by the petitioners to any peculiar favor. The country on the borders of the Chesapeake had been the seat of war for more than a year before the destruction of the tobacco in question. The inhabitants along the bay and upon all the rivers falling into it were aware that the enemy had been for a long while engaged in making predatory incursions into the more exposed neighborhoods for the purpose of destroying the property of the population, and that a great deal of valuable property of different kinds belonging to individuals had been already burned or carried off. It was generally believed that private property within reach of the enemy was everywhere in danger. Tobacco, especially, from its value, was thought to be exposed to *capture; and such, indeed,* was the apprehension en-

tertained for its safety in the portion of country where this tobacco was destroyed, that a deputation was sent to the then governor of Maryland to inform him of the importance of extending protection to that part of the country, because of the quantity of tobacco belonging to the planters which was there exposed to the enemy. The public opinion then was that private property in that section of country would be subject to capture wherever found, unless protected by a sufficient force. In consequence of this, and at the urgent solicitation of a portion of the people, extraordinary means were employed by the government to extend protection to the exposed property; and because those means were not successful, and the property was destroyed in spite of the efforts made to defend it, it is gravely pretended that the government is responsible for the value of the property destroyed, because the presence of the forces employed to protect it was the sole cause of its destruction!

Your committee believe that it is not pretended that the warehouse at Magruder's Ferry, in which the tobacco for which the claim is made was contained, was, at the time of its destruction, occupied as a place of deposit for military or naval stores, or as barracks for the military forces of the United States. One of the witnesses, (James Baden,) whose deposition is submitted in support of the claim, says: "That on the 17th of June, 1814, the warehouse in Prince George's, called Magruder's warehouse, *having been occupied a short time previous* by the American forces, was burnt." Another witness, (G. W. Biscoe,) says that a company of militia, acting under his orders as major of the 17th regiment of Maryland militia, "was posted at Magruder's warehouse *for its protection and defence*, and when the British barges ascended the river on or about the 17th of June, 1814, so soon as they were discovered by Captain Joshua Nailor (the captain in command) to be in reach of his fire, he commenced firing upon them from behind the said warehouses, and continued to do so until his ammunition was expended—the enemy immediately landed, and the militia retreated. The enemy then burned the warehouses, with all the tobacco contained therein." James Baden, (the same witness just before referred to,) in another deposition, makes the same statement, in substance, as Mr. Biscoe as to the burning of the warehouses at Magruder's Ferry, and then says: "This was on the 17th of June, 1814, on which day we prevented them (the British) from coming to Nottingham, which probably prevented that warehouse from sharing the same fate."

From these statements it is perfectly clear that the presence of the military forces had nothing to do in exciting the enemy to destroy the warehouses in question with the property contained in them. The public expectation was that they would be attacked and destroyed. It was not the design or purpose of the government to make that point a military position with a view to the defence of the country, but the forces there at that time were posted there simply to defend the property from the expected attack. It is true there is a witness (Jesse Selby) who states that he "verily believes the warehouses were burned in consequence of said company (the company of militia) being there, and the said warehouses affording protection and being occupied

by them." This might have been the conviction of the witness, but certainly it is not one that can be shared in by any person of ordinary intelligence, who reads the history of that day and remembers the buccaneering and predatory character of the enemy upon every coast and every frontier.

The historian of Maryland (and we use his very words) says: "Admiral Cockburn appeared in the Chesapeake in March, 1813, with four ships-of-the-line and five frigates, and immediately began a series of disgraceful outrages against the property and persons of the unarmed citizens. Even the women and children did not escape the cruelty of these monsters. Frenchtown, Havre de Grace, Fredericktown, on the Eastern Shore, and Georgetown were burned." "Wherever a body of militia was collected, the chivalrous Cockburn held aloof." And again, after mentioning that Cockburn threatened Annapolis and Baltimore, but did not attack them because they were prepared for a vigorous defence, he says: "He," Cockburn, "preferred a more safe and profitable though more inglorious warfare; and private residences and the smaller bay craft were plundered and consumed. So extensive was the destruction that at night the shores and waters of the bay were lit up by the continuous conflagration." All property, of whatever kind, was in danger at any point within the enemy's reach; and not only is it clear that the property in question would have been destroyed if there had been no military force to attempt its defence, but it is more than probable that the presence and efforts of the militia, on that very day, prevented the destruction of other warehouses at Nottingham, which the enemy were then prevented from reaching.

Under the circumstances existing at the time of the destruction of the tobacco, which is the subject of the claim made by petitioners, it was the undoubted duty of the owners of every species of valuable property to remove it beyond the reach of the marauding enemy. Any one who failed to remove it would seem to have neglected to do that for the preservation of his property which ordinary prudence required of every one. But when, as in the present instance, there was not only a failure to remove property, but the owners of it accumulated it in warehouses at points accessible by water, in such quantities as to excite the cupidity of plunderers, or to facilitate the work of those who aimed at its destruction, it cannot be doubted that its loss must be chiefly attributable to their own misconduct.

From all this it is the belief of your committee that there is no foundation whatever for the claim of petitioners, unless upon the broad ground that a State is bound to make compensation to its citizens for all the losses which may be sustained by them in war; but, if that principle is to be recognized, why legislate for one case, or even for one class of persons? If any loss is to be paid, all losses ought to be paid. There are millions upon millions of losses that were incurred by others of our citizens during that war that were as ruinous and hard to be borne as those of the claimants, or of the class to which they belong. What class, what individual is there that does not suffer from the effects of war? To use the language of one of the eminent persons *who took part in the debate* on this subject in 1824,

to which we have already referred, this principle "runs out into consequences beyond our utmost sight." "Consider what may not be said to be either the direct or indirect consequences of war. The scholar is driven by it from his books and flies to arms; the husbandman leaves his plough in the furrow; all classes of the community are thrown into a state of greater or less derangement. All these are the effects of war, and the act of government is its immediate cause. An embargo, for instance, is laid; the merchant's obligations come upon him while his capital lies unemployed and his ships are rotting at the wharves. The farmer loses his foreign market, and his crops are rotting in his barn; the injury is everywhere. You can never indemnify all who suffer, and why must one small class be preferred before all their brethren in calamity?" And what would be the result of the recognition of such a principle? Would not the apprehension of the pecuniary burdens which would inevitably be thrown upon a nation by war impel it to submit to injustice and indignity rather than to provoke a contest by resisting them? And if, at last, it should be driven into war, would it not, in all probability, be subjected to its greatest horrors, as its known policy would tempt the enemy to burn and waste the property of its citizens, with a view to exhaust its resources and destroy its strength?

Claims of this character were pressed upon Congress at a time when the echoes awakened by the enemy's cannon had scarcely ceased their reverberations along the shores and among the hills of every frontier of our widely extended country. Congress took them into consideration at a time when the very atmosphere it breathed was scarcely freed from the smoke which had ascended from the burning property of the sufferers; the sad survivors of many a scene of blood and rapine, caused by the excesses of a lawless and inhuman enemy, were before it, and the destitution and wretchedness with which they had been overwhelmed appealed to all eyes; and Congress itself, when deciding upon the claims, sat within sight of blackened ruins that bore mute but eloquent testimony to the terrible devastations of war; and yet the claims were rejected. And why was this? Were not those who preceded us in these halls men possessed of the ordinary sympathies of our nature? Had they not sensibilities to be awakened by the distresses of their fellow-citizens, and hearts that prompted them to give them all the relief rightfully in their power? Beyond all doubt they had; and the claims were rejected, not because they did not feel for the sufferers, but because they believed that the public good requires that no relief should be given unless in those cases where the suffering has been directly occasioned by the act of the government, in using private property for military purposes.

Whenever the question involved in such claims has attracted the public attention, and it has been decided as one connected with the public policy of the country, the decision of the first Congress has always been affirmed. That it has its foundation in reason and sound policy your committee do not doubt; and they have no hesitation in saying that, in their view, it would be unjust to the great mass of the sufferers in the war of 1812, to whom relief has been three times refused by Congress, after full consideration, to pass acts for the relief

rticular claimants, who, owing to their situation in the neigh-
ood of the seat of government, may sometimes, in an unguarded
ent, obtain from Congress, by importunity, what it has again
igain seen fit to deny to their brethren in misfortune from a sense
stice.

e historian of the Decline and Fall of the Roman Empire, in re-
ig to the fact of the unbelief of the Jews, the cotemporaries of
s and Joshua, who "had beheld with careless indifference the
amazing miracles," whilst the faith of their remote descendants
l become strong in proportion as the favor and protection of Heaven
withdrawn," observes that "that singular people, in contradiction
l the known principles of the human mind, seems to have yielded
:onger and more ready assent to the traditions of their remote
stors than to the evidence of their own senses." And now your
nittee feel tempted, under the circumstances of this case, to in-
:, if claims of the kind under consideration are recognized and
upon representations and proofs such as those now before us,
' years after they had been presented and refused, whether it can-
with quite as much propriety be said that the charity of the
:rican people, through their representatives in Congress, is more
y excited by the vague fancies growing out of the frequent
titions of the almost forgotten tales of past calamity than by the
al presence of real suffering?

. conclusion, your committee beg leave to say: that they believe
be the settled policy of the government of the United States to
e no compensation to its citizens for property captured or de-
'ed in war by the enemy, unless the property captured or de-
'ed was in the military service of the country; that the compen-
n made at any time shall be limited, 1st, to such buildings as
: at the time of their destruction actually occupied by the mili-
forces of the United States in such a manner as to impress upon
a a public character, and justify an enemy in considering them as
ing a part of the military defences of the country; and 2d, to the
s and accoutrements required for the equipment of the volunteers
militia men, and to their horses when they served as mounted
; to the animals, vehicles and other means of transportation ac-
ly employed to facilitate the movement of troops, and to the provi-
s and other supplies necessary to their support; and that no move-
property of any other kind whatever shall be paid for, even if de-
yed in buildings for which compensation would be made; that, in
r opinion, this policy is wise in itself, and ought not to be departed
i in the slightest degree; and that, for the reasons assigned, they
most respectfully submit a recommendation that the bill referred
iem do not pass.

IN THE SENATE OF THE UNITED STATES, *May* 2, 1856.

Mr. WADE made the following report.

[To accompany bill S. 278.]

The Committee of Claims, to whom were referred the petition of the widow of Rinaldo Johnson, and the petition of Hodges and Lansdale, providing indemnity for tobacco destroyed by the British, in 1814, *have given the subject a thorough investigation, and now report:*

That Commodore Barney, in 1814, commanded the United States flotilla designed by the American government to protect the Chesapeake bay and its tributaries from the naval force of the enemy; that to prevent the capture of the vessels under his command, he was compelled to abandon the Chesapeake, and was induced to sail up the Patuxent river, one of its tributaries, with the hope that the British would be unable, or at least unwilling, to follow with their larger vessels. This expectation of the commodore was not realized; he was pursued by the enemy, and was ultimately compelled to blow up his vessels to prevent their capture.

It is well known to the Senate that from this period the Patuxent river was permanently occupied by the naval forces of the enemy, and became the point from which various military expeditions were ordered against the surrounding country, terminating with the capture of Washington and the burning of the Capitol. General Winder was placed in command of this military division; the militia was called out to resist the landing of the British forces, and for a considerable period were successful in several instances in preventing the landing and in all instances in driving the enemy back to their vessels.

It appears, from the evidence, that two public warehouses had been erected many years before this period upon the margin of the Patuxent, for the inspection and deposite of the tobacco grown by the citizens of Prince George's county—one at the village of Nottingham, the other at Magruder's Ferry; that these houses were in 1814 filled with hogsheads of tobacco, the property of the planters of that county, or of merchants who had purchased it for shipment; and that the tobacco for which remuneration is now claimed by the petitioner, R. Johnson, had been deposited in the warehouse at Magruder's Ferry, and that the tobacco for which payment is asked by Hodges and Lansdale was deposited in the warehouse at Nottingham. The evidence conclusively establishes the fact that the warehouse at Magruder's Ferry was burned by the British, with all the tobacco it contained, and that all the tobacco in the warehouse at Nottingham was either taken away or burned by the enemy.

In investigating the right of the petitioners to indemnity from the federal government, your committee at once perceive that the petitioners could never have claimed indemnity under the general laws of 1816 and 1817, because the relief designed to be afforded by those acts *expressly and exclusively* applied to injuries to *real property*. The act of 1816 provides "that any person who, in the time aforesaid, has

sustained damages by the destruction of his or her *house* or *building* by the enemy, while the same was occupied as a military deposite under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage, provided it shall appear that such occupation was the cause of its destruction."

Your committee have been unable to recognise the force or propriety of the distinction which makes the United States liable for *real property* destroyed by the enemy, and which exempts the government from liability for *personal property* destroyed under the same circumstances; they are unable to appreciate the justice of a rule which makes the government liable for a house burned by the enemy, and exempts it from liability for the personal property burned in the house.

Your committee are of opinion that the United States should be held liable to reimburse her citizens, whenever private property has been (in accordance with the usages of civilized warfare) destroyed by a public enemy, *because of its use* for military purposes by the authority of an officer or agent of the government.

Your committee believe that the facts, to which they will now very briefly advert, fully establish the right of the petitioners to relief, under the principle here laid down.

First. In reference to the warehouse at Magruder's Ferry, it appears that a considerable American force was stationed behind this warehouse, which being filled with tobacco, afforded complete protection against the cannon of the enemy, and that a battle was fought with the British vessels, which continued until the ammunition of our troops was exhausted, and they were consequently obliged to retreat. It is clearly proven that upon the retreat of the American force, the British landed and burned the warehouse, with the tobacco of the petitioner, R. Johnson, and others therein contained. In regard to the tobacco destroyed at the Nottingham warehouse, it appears that this warehouse was for a considerable time the depository of the military stores intended for the use of the militia employed in the defence of this exposed section of Maryland, and that upon one occasion the tobacco was rolled, by the directions of the officer in command, from this house, with which a breastwork was formed, from behind which the enemy were fought and repulsed. It also appears that when the enemy subsequently landed and proceeded to Washington, they destroyed or took away all the tobacco deposited in this warehouse which belonged to the petitioners, Hodges & Lansdale, and others.

Your committee further report that no possible doubt can exist as to the quantity of the tobacco which belonged to the petitioners, because it is evidenced by tobacco notes now in their possession, or deposited in the State Department, which designate each hogshead and the net weight of its contents. There are many precedents, to which your committee do not deem it necessary to refer, where the government have paid for personal property destroyed under similar circumstances. The value of the tobacco is also established by satisfactory proof, but the committee have deemed it better, in the bill which they have prepared for the relief of the petitioners, to provide that the proper accounting *officers of the treasury* shall ascertain, from such

proof as may be laid before them, the quantity and value of the tobacco destroyed, and shall pay the value so to be ascertained.

There being no distinction in principle in the right of the petitioners to relief, the committee have reported a bill for their joint relief, which they confidently recommend to the favorable consideration of the Senate.

IN THE SENATE OF THE UNITED STATES—*April* 18, 1856,

Mr. WADE made the following report.

[To accompany bill S. 255.]

The Committee of Claims, to whom was referred the petition of the administrator of Rinaldo Johnson and of Ann E. Johnson, have had the same under consideration, and now report:

The petition seeks to obtain indemnity for a quantity of tobacco said to have been taken and destroyed by the British during their invasion of Maryland, in the year 1814. The facts and principles involved in the several cases being identical, it was deemed proper to consider them together. These and similar claims have been frequently urged upon the attention of Congress, and numerous reports have been made, in both houses, in which the principles, both of law and equity, involved in them, have been elaborately discussed.

During the last Congress, a bill was reported and passed the Senate, for the payment of the claims of these petitioners. The report accompanying the bill contains the following statement of the case, which is adopted as a part of this report:

Commodore Barney, in 1814, commanded the United States flotilla designed by the American government to protect the Chesapeake bay and its tributaries from the naval force of the enemy; that to prevent the capture of the vessels under his command, he was compelled to abandon the Chesapeake, and was induced to sail up the Patuxent river, one of its tributaries, with the hope that the British would be unable, or at least unwilling, to follow with their larger vessels. This expectation of the commodore was not realized; he was pursued by the enemy, and was ultimately compelled to blow up his vessels to prevent their capture.

It is well known to the Senate, that from this period the Patuxent river was permanently occupied by the naval forces of the enemy, and became the point from which various military expeditions were ordered against the surrounding country, terminating with the capture of Washington, and the burning of the Capitol. General Winder was placed in command of this military division; the militia was called out to resist the landing of the British forces, and for a considerable period were successful in several instances in preventing the landing, and in all instances in driving the enemy back to their vessels.

It appears, from the evidence, that two public warehouses had been

erected, many years before this period, upon the margin of the Patuxent, for the inspection and deposite of the tobacco grown by the citizens of Prince George's county—one at the village of Nottingham, the other at Magruder's Ferry; that these houses were in 1814 filled with hogsheads of tobacco, the property of the planters of that county, or of merchants who had purchased it for shipment; and that the tobacco for which remuneration is now claimed by the petitioner, R. Johnson, had been deposited in the warehouse at Magruder's Ferry. The evidence conclusively establishes the fact that the warehouse at Magruder's Ferry was burned by the British, with all the tobacco it contained.

In investigating the right of the petitioners to indemnity from the federal government, your committee at once perceive that the petitioners could never have claimed indemnity under the general laws of 1816 and 1817, because the relief designed to be afforded by those acts *expressly and exclusively* applied to injuries to *real property*. The act of 1816 provides "that any person who, in the time aforesaid, has sustained damages by the destruction of his or her *house* or *building* by the enemy, while the same was occupied a sa military deposite under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage, provided it shall appear that such occupation was the cause of its destruction."

Your committee have been unable to recognise the force or propriety of the distinction which makes the United States liable for *real property* destroyed by the enemy, and which exempts the government from liability for *personal property* destroyed under the same circumstances; they are unable to appreciate the justice of a rule which makes the government liable for a house burned by the enemy, and exempts it from liability for the personal property burned in the house.

Your committee are of opinion that the United States should be held liable to reimburse her citizens, whenever private property has been (in accordance with the usages of civilized warfare) destroyed by a public enemy *because of its use* for military purposes by the authority of an officer or agent of the government.

Your committee believe that the facts, to which they will now very briefly advert, fully establish the right of the petitioners to relief, under the principle here laid down.

First. In reference to the warehouse at Magruder's Ferry, it appears that a considerable American force was stationed behind this warehouse, which, being filled with tobacco, afforded complete protection against the cannon of the enemy, and that a battle was fought with the British vessels, which continued until the ammunition of our troops was exhausted, and they were consequently obliged to retreat. It is clearly proven that upon the retreat of the American force, the British landed and burned the warehouse, with the tobacco of the petitioner, R. Johnson, and others therein contained.

Your committee further report that no possible doubt can exist as to the quantity of the tobacco which belonged to the petitioners, because it is evidenced by tobacco notes now in their possession, or deposited in the State Department, which designate each hogshead and the net weight of its contents. There are many precedents, to which your committee do *not deem it necessary to* refer, where the government

have paid for personal property destroyed under similar circumstances. The value of the tobacco is also established by satisfactory proof, but the committee have deemed it better, in the bill which they have prepared for the relief of the petitioners, to provide that the proper accounting officers of the treasury shall ascertain, from such proof as may be laid before them, the quantity and value of the tobacco destroyed, and shall pay the value so to be ascertained.

There being no distinction in principle in the right of the petitioner to relief, the committee have reported a bill for his relief, which they confidently recommend to the favorable consideration of the Senate.

IN THE SENATE OF THE UNITED STATES—*May* 2, 1856.

Mr. Wade, from the Committee of Claims, submitted a report, (No. 151.) accompanied by the following bill; which was read and passed to a second reading :

A BILL for the relief of William G. Ridgely.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the treasury shall audit the claim of William G. Ridgely, for tobacco destroyed by the British in eighteen hundred and fourteen, at the warehouses at Nottingham and Magruder's Ferry, in Prince George's county, and at Benedict's, in Charles county, Maryland, and from such proof as may be exhibited to them, within six months after the passage of this act, ascertain the quantity and value of his tobacco so destroyed; and that the amount so ascertained shall be paid, out of any money in the treasury not otherwise appropriated, to the said William G. Ridgely.

IN THE SENATE OF THE UNITED STATES—*April* 18, 1856.

Mr. Wade, from the Committee of Claims, submitted a report, (No. 137,) accompanied by the following bill; which was read and passed to a second reading :

A BILL for the relief of the legal representatives of Rinaldo Johnson and of Ann E. Johnson, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the treasury shall audit the claims of the legal representatives of Rinaldo Johnson and of Ann E. Johnson, for tobacco destroyed by the British in eighteen hundred and fourteen, at the warehouse at Magruder's Ferry, in Prince George's county, Maryland, and from such competent proof as may be exhibited to them, within six months after the passage of this act, ascertain the

quantity and value of their tobacco so destroyed; and that the amount so ascertained shall be paid, out of any money in the treasury not otherwise appropriated, to the legal representatives of Rinaldo Johnson and of Ann E. Johnson, deceased.

STATE OF MARYLAND, *Prince George's county, to wit:*

Personally appeared James Baden, of the county aforesaid, before the subscriber, one of the State of Maryland's justices of the peace for Prince George's county aforesaid, and being sworn on the Holy Evangely of Almighty God, deposeth and saith: That he was a qualified inspector of tobacco for Magruder's warehouse, in Prince George's county aforesaid, on the Patuxent river, for the years 1813, 1814, and 1815; and in March, 1813, when he took possession of said warehouse, Rinaldo Johnson, senior, a large planter in Prince George's county, had stored in said warehouse sixty-eight hogsheads of tobacco, all of which belonged to said Rinaldo Johnson, senior. This deponent is enabled to speak positively of the number of hogsheads from an examination of a paper now in his possession, and a copy of which is herewith filed, marked A, which shows the condition of the warehouse and the amount of tobacco stored in said warehouse, and *to whom the tobacco belonged.* This deponent further states, that each hogshead averaged at least one thousand pounds; that the tobacco thus stored by the said Johnson was destroyed when the warehouses at Magruder's were burned by the naval forces of Great Britain in June, 1814. This deponent further states, that the inspection books of said warehouse were burned when the British destroyed the aforesaid warehouses, which had been used by the militia as a work of defence and fortification, they being the only houses located on the shore of the river, and which furnished an entrenchment behind which our troops obtained protection; and in consequence of their use and occupation by troops as a military post or depot, I believe, may be ascribed its destruction by the enemy, for as soon as the troops were forced to retreat from the warehouses, in consequence of superior numbers and ordnance of the enemy, they carried and conflagrated said warehouses and their contents. This deponent further states, that the warehouses as aforesaid were occupied by our troops from the extreme necessity of the case; at this assailable point there were no other means to which our troops could resort for protection or occupation, but the said warehouses. These were the only defences then available, and hence the necessity of occupation, and planting our artillery in such a manner so as to render it effective, and to cover our troops from the fire of the enemy. Captain Naylor, who commanded the company, died several years ago, as well as other officers.

Sworn before me, this 13th day of April, in the year 1850.

CLEMENT R. CONNECH,
Justice of the Peace in and for Prince George's county, Md.

For the character and standing of Mr. Baden, who made the aforegoing affidavit, I beg to refer to the Hon. Mr. Pratt, Senator from the State of Maryland.

M. C. YOUNG,
Attorney for Claimants.

APRIL, 1850.

Extract of tobacco stored by Rinaldo Johnson, senior, late of Prince George's county, Maryland, in the warehouses at Magruder's, in said county, and which was burned by the British during the war of 1812.

Mark.	No.	Gross.	Tare.	Net wt.	Mark.	No.	Gross.	Tare.	Net wt.
R. F	6	862	96	766	R. F	175	1,006	110	896
Do	11	806	106	700	Do	177	985	109	876
Do	2	942	102	840	Do	178	1,190	104	1,086
Do	3	837	100	737	Do	179	1,025	102	923
Do	8	906	103	803	Do	277	1,225	100	1,125
Do	10	968	106	862	Do	278	1,275	102	1,173
Do	12	844	107	737	Do	279	1,280	106	1,174
Do	172	1,087	102	985	Do	280	1,208	104	1,104
Do	173	1,243	98	1,145	Do	286	994	98	896
Do	174	1,156	104	1,052	Do	176	1,231	104	1,127
Do	175	1,225	106	1,159	Do	50	1,069	108	961
Do	176	1,256	106	1,150	Do	51	1,140	92	1,048
Do	177	1,188	102	1,086	Do	52	1,058	108	950
Do	83	1,150	106	1,044	Do	53	1,092	106	986
Do	84	1,088	106	982	Do	54	1,085	110	975
Do	85	1,212	108	1,104	Do	98	1,027	106	921
Do	86	1,190	102	1,088	Do	99	1,097	102	995
Do	157	1,027	104	923	Do	101	975	106	869
Do	158	1,112	103	1,009	Do	102	1,100	110	990
Do	159	1,013	109	922	Do	103	1,009	109	900
Do	160	1,075	114	961	Do	104	1,044	111	933
Do	161	1,100	111	989	Do	105	918	103	815
Do	162	1,106	108	998	Do	106	1,081	110	971
Do	163	981	108	973	Do	107	1,000	98	902
Do	164	1,037	107	930	Do	108	1,104	107	997
Do	165	1,025	109	916	Do	109	962	103	859
Do	166	1,130	106	1,024	Do	110	1,088	113	975
Do	167	1,012	110	902	Do	111	964	102	862
Do	169	1,023	110	913	Do	112	1,125	96	1,029
Do	170	1,121	107	1,014	Do	113	1,180	110	1,070
Do	171	1,009	109	900	Do	114	1,131	108	1,023
Do	172	1,134	100	1,034	Do	115	1,150	101	1,049
Do	173	1,150	103	1,047	Do	116	1,125	100	1,025
Do	174	1,058	107	951	Do	117	1,093	103	990

NOTTINGHAM, *August* 28, 1828.

SIR: At your request for information relative to the tobacco (your property) taken from the warehouses at Nottingham by the British during the period of their invasion, I have to state that a part of your tobacco was used by my order, as commanding officer at Nottingham, *for the purpose of* erecting a breastwork for the defence of the place;

and to the exception of three or four hogsheads, I am confident, out of the sale I made to you of one hundred and five hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a part of the tobacco thus used was sold by him to you.

With due respect, yours, very truly,

GEO. W. BISCOE.

CHAS. J. CALLETT, Esq.

DISTRICT OF COLUMBIA, *County of Washington,* } *to wit:*

On this 28th day of August, 1828, personally appeared George W. Biscoe before me, the subscriber, a justice of the peace in and for the county aforesaid, and made oath on the Holy Evangely of Almighty God that the facts as stated in the above and foregoing letter are correct and true, to the best of his knowledge and belief.

JAMES ORD, *Justice of the Peace.*

GEORGETOWN, *February* 27, 1832.

SIR: I have been requested by Mr. Callett to state to the committee over which you preside my knowledge and opinion of the destruction of the tobacco in the tobacco warehouses in the lower counties of Maryland by the enemy during the late war with England.

I have no personal knowledge of any except the warehouse and its contents at Cedar Point, in Charles county, which was certainly destroyed, so far as we could judge of the actions of men, in consequence of an attack on the enemy at that place by the militia under the command of the late General Stuart, because the warehouse with the tobacco afforded protection to the American troops. A tobacco warehouse filled with tobacco is believed to be cannon-proof, and the house then full afforded complete protection to a portion of our troops. It was burned by the enemy in the evening of the day of the engagement. I have no knowledge of the circumstances attending the burning of other warehouses, but, from their situation, the complete protection they afforded to persons covered by them, and the generally prevailing opinion in that part of the country at the time, I have no doubt that most of them were destroyed to deprive our troops of shelter and protection.

I have the honor to remain, very respectfully, yours, &c.,

B. G. SEMMES.

Hon. W. C. WHITTLESEY,
Chairman of Com. of Claims, Ho. of Reps., Washington.

FEBRUARY 27 1832.

Having been requested by Mr. Callett, of Maryland, to state my knowledge of the *manner of the destruction* of the tobacco warehouse

at Cedar Point, on the Patuxent, I would remark that during the late war, I think in the summer of 1814, some schooners of the enemy were anchored off the warehouse; that some of the crew landed, and were in the act of taking away some of the tobacco, when General Stuart, the commander of the troops in the vicinity, ordered them down, and commenced an attack with artillery upon the enemy at the warehouse; that after firing several shots from cannon, &c., the warehouse was set fire to by the enemy and levelled to the ground, with all the tobacco then in the house. Had the attack not have been made by the American troops, it is believed that the house would not have been fired, as above and below on the Potomac tobacco warehouses were visited by the enemy and not destroyed. Being at the time acting as an aid to the general, I was present and saw the attack and firing of the tobacco warehouse.

D. JENIFER.

COMMITTEE OF CLAIMS,
House of Representatives.

NOTTINGHAM, *February* 27, 1832.

DEAR SIR: The statement which I am about to make, if necessary, I can verify on oath. I now do so on honor, as brigade commander of the militia of Maryland, and an officer holding a commission of surveyor and inspector of the revenue under the general government. In the request for information on the subject of the defence of Magruder's warehouses, in June, 1814, by a detachment of militia acting under my orders, in reply, I have to state that the captain in command reported to me his rencounter with the enemy at that place; he stated that on the near approach of the British barges, (said to be) under the command of Commodore Barney and Colonel Malcomb, of marines, he posted his men behind the warehouses, situated within thirty yards of the shore, and that so soon as his fire of musketry could be deemed effectual he commenced, and continued to do so for an hour or two, being under cover of the warehouses; finally, his ammunition became expended, and he was compelled to retire; the enemy then landed, and set fire to the warehouses, which were burned.

I am aware that you sustained considerable loss in tobacco there and elsewhere on the Patuxent, river from the circumstance of your having purchased of me more than one hundred hogsheads, which, with the exception of a few, say (to the best of my recollection) four or five, in the warehouses here, were either burned in Magruder's warehouses, at the period above stated, or was carried away by the enemy on their retreat from the city of Washington to the shipping at this place. At one period I used the tobacco in the warehouses here for military purposes, a part of which I recollect was your property, having sold it to you.

Wishing you success in your appeal to Congress, I remain, truly your obedient servant,

GEO. WASHINGTON BISCOE.

CHARLES J. CALLETT, Esq.

WASHINGTON COUNTY, } *to wit:*
District of Columbia,

On this 20th day of December, 1833, personally appeared before me, the subscriber, a justice of the peace in and for said county, Jesse Selby, and makes oath on the Holy Evangely of Almighty God, that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia, commanded by Captain Joshua Naylor, and that the said warehouse, he verily believes, was burned in consequence of the said company being there, and the said warehouse affording protection, and being occupied by them. This deponent further states, that Captain Naylor died in the year 1825.

Sworn before,

HENRY WERTZ, *Justice of the Peace.*

DISTRICT OF COLUMBIA, } *to wit:*
Washington county,

On this 20th day of February, 1835, before me, the subscriber, a justice of the peace in and for said county, personally appeared James Badin, and makes oath on the Holy Evangely of Almighty God, that General George W. Biscoe, commanding the Maryland militia, on the 17th day of June, 1814, (then Major Biscoe,) ordered the tobacco to be rolled out of the warehouse in Nottingham, Prince George's county, Maryland, and a large breastwork made of the tobacco, the cannon planted behind it, and then we fired on the British, who manned eleven barges, commanded by Commodore Barry, who, at that time, retreated; the heads were out of many hogsheads, and the tobacco a good deal torn out. The British, some time after, took the most of the tobacco from the warehouse, and they kept possession of the waters of the Patuxent river as high as Nottingham from that time until they burned the Capitol. Captain Naylor's company of Maryland militia were stationed behind Magruder's warehouse, and as soon as the British barges came within gun-shot commenced firing upon them, and continued until the ammunition was expended; they then retreated, and the enemy immediately landed, and set fire to the warehouse and burned all the tobacco within it. This was on the 17th day of June, 1814, as above stated, which day we prevented them from coming to Nottingham, which, probably, prevented that warehouse from sharing the same fate. This deponent further saith, that he was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham. Charles J. Callett was a large owner of tobacco, and a very heavy sufferer. This deponent further saith, that he was appointed inspector in January, 1813, at Magruder's warehouse. Previous to his appointment, James Naylor was the inspector.

JAMES BADEN.

Sworn to and subscribed before me, the day and year first above written.

ROBERT CLARKE, Justice of the Peace.

The memorialists claim compensation for a quantity of tobacco, said to have been stored in the tobacco warehouse at Magruder's, in Prince George's county, Maryland, and destroyed by the British in June, 1814, in consequence of said premises having been used as a military post.

James Baden deposes that he was a qualified inspector of tobacco for Magruder's warehouse in 1813, 1814, and 1815, and that when he took possession of said warehouse in March, 1813, Rinaldo Johnson, senior, had stored in said warehouse sixty-eight hogsheads of tobacco, averaging 1,000 pounds each. That the tobacco thus stored by said Johnson was destroyed by the British naval forces in June, 1814, when the Maryland warehouses at Magruder's were burned by them. He further states that the said warehouses had been used by the militia as a work of defence and protection, being the only houses located on that shore of the river, and in consequence of their use and occupation, he believes, they were destroyed. He says these buildings were so occupied from the necessity of the case, and as soon as the troops were forced to retreat they were burned. He says Captain Naylor, who commanded the troops, died some years ago, as well as other officers.

Mr. Baden also testifies, in a separate deposition, that Mrs. Rinaldo Johnson had in the warehouse, at the time it was burned, eighty hogsheads of tobacco. He also testifies that tobacco was worth, after the war, from $12 to $15 per hundred.

General George W. Biscoe testifies that a company of militia acting under his orders, as major of the 17th regiment, were posted at Magruder's warehouse for its defence; and when the British barges ascended the river, on or about the 17th June, 1814, so soon as Captain Naylor (in command) deemed them to be in reach of his fire, commenced firing upon them from behind said warehouses, and continued to do so until his ammunition was exhausted. The enemy immediately landed and the militia retreated. The enemy then burned the warehouses, with all their contents. He always understood that Mr. Rinaldo Johnson and his wife, Ann E. Johnson, had a large quantity of tobacco in the warehouses at the time of the destruction.

Reference is also made to the case of Charles J. Callett, as in point, (contained in Report No. 211, H. R., 3d session 27th Congress, which is annexed.)

STATE OF MARYLAND, } *to wit:*
Prince George's county, }

On this 27th day of January, in the year of our Lord one thousand eight hundred and forty-nine, James Baden personally appeared before me, the undersigned, a justice of the peace within and for the county aforesaid, and made oath on the Holy Evangelists of Almighty God, that in the month of June, (17th, 1814,) one thousand eight hundred and fourteen, the warehouse in Prince George's county, called Magruder's warehouse, having been occupied a short time previous by the American forces, was burned by the British, and that

Mrs. Rinaldo Johnson had in the warehouse at the time it was burned eighty hogsheads of tobacco; and that the burning of said warehouse was in consequence of such previous military occupation by the American forces aforesaid.

JAS. BADEN, *Inspector.*

Subscribed and sworn to before me, this 27th day of January, 1849.

JAMES H. RAWLINGS,
Justice of the Peace.

MARYLAND, *Prince George's county, ss:*

I hereby certify that James H. Rawlings, gentleman, before whom the within and aforegoing affidavit appears to have been made, was, on the day of the date thereof, and still is, one of the State of Maryland's justices of the peace in and for said county, duly commissioned and sworn.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of Prince George's county court, this 19th day of February, A. D. 1849. [L. S.]

JNO. B. BROOKE,
Clerk of Prince George's County Court.

No. 115.—(See No. 31 also.)

Additional documents on file in the case of the representatives of Ann E. Johnson:

1. Deposition of James Baden.
2. Tobacco notes from State Department.
3. Letter from George W. Biscoe.
4. Copy of letter from General Winder.
5. Copy of letter from General Bowie.

FLOTILLA, *July* 8, 1814.

MY DEAR GENERAL: I have thought proper to send forward the information I received from Major Biscoe, and to point out the necessity of having some troops stationed here to act with the flotilla; at the same time to inform the government of the impropriety of drawing the militia from this vicinity across the river for the defence of Calvert county. I will thank you to have the despatch forwarded by some trusty person; and am yours, &c.,

JOSHUA BARNEY.

FEBRUARY 20, 1850.

The above letter was written at the time when the United States flotilla, commanded by Commodore Joshua Barney, were anchored at the port of Nottingham, *Prince George's* county, Maryland.

G. W. BISCOE.

The original letter, in the handwriting of Commodore Barney, is filed with the House committee, in the case of George Armstrong.

No. 31.

List of papers filed in the case of T. Johnson, administrator of Rinaldo Johnson:

1. Memorial.
2. Inspector's letter, (Cornick.)
3. Certificate of Inspector Baden.
4. Supplemental report of Committee on Public Expenditures, 3d session 29th Congress.
5. Affidavit of J. H. Rawlings.
6. Affidavit of George W. Biscoe, major 17th regiment.

Second Session.

7. Amendatory memorial.
8. Affidavit of Jesse Selby.
9. Letter of Third Auditor.
10. Letter of administration.

NOTTINGHAM, *February* 1, 1849.

DEAR SIR: Your letter bearing date January 23d is at hand and its contents observed. I renewed my memorial to Congress the present session for my tobacco claim, the merits of which, in my opinion, will test the success of others claiming indemnity for the loss of that species of property. I am advised by one member of Congress, General Chapman, to permit him to withhold my application until the board of commissioners are appointed by Congress, whose duty it will be to decide on all matters connected with the loss of private property and claims against the United States. I have done so, believing it will be much to my interest to delay, as the case would be referred to the same persons in committee as reported unfavorably the last session. I am confined by indisposition pretty much to the house, and have not had a chance to see Captain Baden, who gave his deposition in regard to my claim, which accompanies my papers, now on file at Washington. I will confer with him on the subject-matter of your letter. The inspectors' books at Magruder's warehouse were burnt with the house by the enemy, and I am sure Captain Baden cannot recollect the number of hogsheads or weights of Mr. Johnson's tobacco, and much do I regret it, as my feelings are alive to the well-doing of the family of a departed friend, for whom I had the highest regard. I this moment examined the definitive list, and find that T. R. Johnson made a deposite of 54 tobacco notes in the office of the board of commissioners, acting under the Ghent treaty, in the name of Ann E. Johnson—independent of 80 hogsheads of tobacco, and sundry plate

valued at $500, as per memorial of the late Governor Joseph Kent. Present my kindest regards to W. T. Maddox, esq.

Very truly and respectfully, your obedient servant,

GEO. W. BISCOE.

GEO. F. MADDOX, Esq.

NOTTINGHAM, *August* 18, 1814.

SIR: As soon as you may find yourself justified in discharging the militia, you will oblige me by directing the sergeant and his party of the regulars, with the eighteen-pounder, to proceed to Upper Marlborough and await orders.

WM. H. WINDER,
Brigadier General, &c.

Major WASHINGTON BISCOE.

The above order, in the handwriting of General Winder, is filed with the House committee, in the case of George Armstrong.

MARCH 5, 1850.

I certify that the above is in the handwriting of my father, Wm. H. Winder.

CHAS. H. WINDER.

TREASURY DEPARTMENT,
Third Auditor's Office, November 30, 1850.

SIR: The Secretary of the Treasury has referred to this office your letter to him of the 27th instant, applying for a certified copy of a deposition of James Selby, relative to the destruction by the British, in 1814, of tobacco in Magruder's warehouse, and has directed that the copy should be furnished to you. I have therefore caused one to be made, and herewith transmit the same. The christian name of the deponent appears to be Jesse, not James.

Respectfully, your obedient servant,

JNO. S. GALLAHER,
Auditor.

Mr. C. YOUNG, Esq.,
Washington, D. C.

MARYLAND, *Prince George's County, to wit:*

The State of Maryland to Thomas Rinaldo Johnson, of Prince George's county, greeting:

Whereas Rinaldo Johnson, late of said county, deceased, died intestate, as it is said, we do therefore give and grant unto you the said

Thomas Rinaldo Johnson, full power and authority to administer all and singular the goods, chattels, and credits of the said deceased, lying and being within the State, not already administered, and to demand, collect, and levy, and in a legal manner require and receive all manner of debts due and owing to the said deceased; and well and faithfully to dispose of the same, and out of the goods, chattels, and credits of the said deceased you are well and truly to pay the debts due by the said deceased, so far as the same will extend, you having first taken your oath well and truly to administer the same, and to make or cause to be made a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, together with a list of debts, sperate and desperate, which may come to your hands, possession, or knowledge, appraised in money, as also to render a true and just account of your administration, and to exhibit both to the register of the orphans' court of Prince George's county; which inventory you are to return on or before the 4th day of February now next ensuing, and an account within twelve calendar months; and lastly, we do hereby appoint you, the said Thomas Rinaldo Johnson, administrator *de bonis non* of the said deceased.

Given at Upper Marlborough town this 4th day of November, in the year of our Lord one thousand eight hundred and forty-seven.

Test: JAMES HARPER,
Register of Wills for Prince George's Co.

STATE OF MARYLAND, } *to wit:*
Prince George's county,

On this 18th day of March, A. D. eighteen hundred and fifty, personally appeared Captain James Baden before me, the subscriber, a justice of the peace in and for Prince George's county, and State aforesaid, and makes oath on the Holy Evangely of Almighty God, that directly after the war tobacco was worth from 10 to 15 dollars per hundred, and sold for that price per hundred pounds.

Sworn before— JAMES H. RAWLING,
Justice of the Peace.

STATE OF MARYLAND, } *sct.*
Prince George's county.

I hereby certify that it appears from the record and proceedings now on file in my office, that Captain James Baden, the above deponent, was inspector of tobacco at Magruder's warehouse, in and for said county, in the years 1813 and 1814.

And I hereby further certify that James H. Rawling, gentleman, before whom the aforegoing affidavit was made, was on the day of the date thereof, and still is, one of the said State's justices of the peace, in and for said county, duly commissioned and sworn.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of Prince George's county court, this fourth day of June, eighteen hundred and fifty. [L. S.]

JOHN B. BROOKE,
Clerk of Prince George's County Court.

To the honorable the Senate and House of Representatives of the United States:

The amendatory memorial of the undersigned, and on behalf of Mrs. Sally Ann Nuttrill, administratrix of Ann E. Johnson, respectfully showeth that your petitioners heretofore presented their claim for relief to your honorable body at the last session of Congress. Since then it has been intimated to the undersigned that doubts as to the validity of the claim might be raised on account of the long period which has elapsed since the loss occurred and the presentation of his and her late memorial. The undersigned can easily remove such an impression, if it exist. By reference to the records in the Department of State, it can be seen that the late Hon. Joseph Kent filed, many years since, under the act of 2d March, 1827, among others, a claim for the tobacco for which your memorialist now claims remuneration. Such claims were not then allowed, but of late years they have been by Congress; your memorialist, on learning this latter fact, immediately after he could with propriety do so, for his letters of administration were granted in 1847, as appears by certificate annexed, and as soon as he could obtain the testimony which he could consider efficient, he then presented his claim. There being some difficulty as to the proper ownership of the tobacco, which is yet unsettled, between the estates of Mrs. Ann E. Johnson and Rinaldo Johnson, hence it is that the claims of both have been presented together. If Congress should take favorable action on the claim, it cannot be doubted but that the proper department, which may be authorized to settle it, will direct the payment to those who may be justly entitled to receive what Congress may allow.

In addition to former papers heretofore filed in support of this claim, the undersigned accompanies this with a copy of the deposition of Jesse Selby, now on file in the Third Auditor's office, and his letters of administration on the estate of Rinaldo Johnson.

All which is respectfully submitted.

THOS. RINALDO JOHNSON,
Administrator of Rinaldo Johnson, and
Agent for Mrs. Sally Ann Nuttrill,
Administratrix of Ann E. Johnson.

—

UNITED STATES OF AMERICA, }
District of Columbia. } *sct:*

On this seventh day of December, personally appears before the subscriber, a justice of the peace in and for the county aforesaid, Thos. Rinaldo Johnson, and makes oath that the facts as stated by him in the memorial aforesaid, as to the presentation of the original thereof to Congress, are true, and he, the said Thos. Rinaldo Johnson, makes oath that to the best of his belief the other facts stated by him are true as set forth above.

Sworn to and subscribed before—

JOHN D. CLARK, J. P.

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the papers hereunto annexed are true copies, transcribed from and carefully collated with the original papers on file in this department.

In testimony whereof, I, John M. Clayton, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this first day of April, A. D. 1850, and of the Independence of the United States of America the seventy-fourth.

[L. S.]

J. M. CLAYTON.

PATUXENT RIVER,
Magruder's Warehouse, August 15, 1810.

Received of Rinaldo Johnson eight hogsheads crop tobacco, as under noted, deliverable to the bearer on demand.

R. J.—169	1,023—110	913
170	1,121—107	1,014
171	1,009—109	900
172	1,134—100	1,034
174	1,058—107	951
175	1,006—110	896
177	985—10....9	876
179	1,025—102	923

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, March 21, 1810.

Received of Rinaldo Johnson one hogshead crop tobacco, as under noted, deliverable to the bearer on demand.

R. J.—11 ..... 806—106 700

JAMES NAYLOR.

October 21, 1810.

Mr. Bunell will be as good as to inform Mr. Johnson that there is left three hogsheads of second tobacco on my books, for which he did not give notes* for the other evening; he can have them at any time he will send down.

JAMES NAYLOR.

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* Those notes were never received by me, nor by any other person for me, and are counted in the number of fifty-four hogsheads.

T. R. JOHNSON.

PATUXENT RIVER,
Magruder's Warehouse, June 7, 1810.

Received of Rinaldo Johnson three hogsheads crop tobacco, as under noted, deliverable to the bearer on demand.

R. J.—84	1,088—106	982
85	1,212—108	1,104
86	1,190—102	1,088

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, August 16, 1810.

Received of Rinaldo Johnson four hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—105	918—103	815
106	1,081—110	971
107	1,000— 98	902
108	1,104—107	997

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, September 28, 1810.

Received of Rinaldo Johnson six hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—172	1,087—102	985
173	1,243— 98	1,145
174	1,156—104	1,052
175	1,225—106	1,119
176	1,256—106	1,150
177	1,188—102	1,086

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, March 24, 1810.

Received of Rinaldo Johnson one hogshead second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—12	844—107	737

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, March 21, 1810.

Received of Rinaldo Johnson one hogshead crop tobacco, as under noted, deliverable to the bearer on demand.

R. J.—6	862— 96	766

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, June 5, 1810.

Received of Rinaldo Johnson four hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—50	1,069—108	961
52	1,058—108	950
53	1,092—106	986
54	1,085—110	975

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, September 28, 1810.

Received of Rinaldo Johnson four hogsheads crop tobacco, as under noted, deliverable to the bearer on demand.

R. J.—277	1,225—100	1,125
278	1,275—102	1,173
279	1,280—106	1,174
280	1,208—104	1,104

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, August 13, 1810.

Received of Rinaldo Johnson two hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—98	1,027—106	921
99	1,097—102	995

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, August 16, 1810.

Received of Rinaldo Johnson four hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—101	975—106	869
102	1,100—110	990
103	1,009—109	900
104	1,044—111	933

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, August 17, 1810.

Received of Rinaldo Johnson nine hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—109	962—103	859
110	1,088—113	875

R. J.—111	964—102	862
112	1,125— 96	1,029
113	1,180—110	1,070
114	1,131—108	1,023
115	1,150—101	1,049
116	1,125—100	1,025
117	1,093—103	990

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, March 21, 1810.

Received of Rinaldo Johnson two hogsheads second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—2	942—102	840
3	837—100	737

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, March 24, 1810.

Received of Rinaldo Johnson one hogshead second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—8	906—103	803

JAMES NAYLOR.

PATUXENT RIVER,
Magruder's Warehouse, March 24, 1810.

Received of Rinaldo Johnson one hogshead second tobacco, as under noted, deliverable to the bearer on demand.

R. J.—10	968—106	862

JAMES NAYLOR.

April, 1850.

The tobacco notes recited within are on file in the Department of State, with the petition of Joseph Kent, late a senator of the United States, and administrator of Rinaldo Johnson, upon a claim for said estate, under the convention of July 12, 1822.

Under that convention nothing was allowed for tobacco destroyed by the British. For this statement reference is respectfully made to the Department of State.

M. C. YOUNG,
Attorney for Claimants.

IN THE SENATE OF THE UNITED STATES.

Mr. CLAY, from the Committee of Claims, submitted a report, (No. —,) accompanied by the following bill; which was read and passed to a second reading.

A BILL for the relief of Hodges & Lansdale, and the legal representatives of Rinaldo Johnson, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the treasury shall audit the claims of Hodges & Lansdale, and of the representatives of Rinaldo Johnson, for tobacco destroyed by the British in eighteen hundred and fourteen, at the warehouses at Nottingham and Magruder's Ferry, in Prince George's county, Maryland, and from such proof as may be exhibited to them within six months after the passage of this act, ascertain the quantity and value of their tobacco so destroyed, and that the amount so ascertained shall be paid out of any money in the treasury not otherwise appropriated to the said Hodges & Lansdale, and the legal representatives of Rinaldo Johnson, deceased.

IN THE SENATE OF THE UNITED STATES.

Mr. ———, from the Committee of Claims, submitted a report, (No. —,) accompanied by the following bill; which was read and passed to a second reading.

A BILL for the relief of the legal representatives of Rinaldo Johnson and Ann E. Johnson, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the treasury shall audit the claims of the legal representatives of Rinaldo Johnson, and of Ann E. Johnson, for tobacco destroyed by the British in eighteen hundred and fourteen, at the warehouse at Magruder's Ferry, in Prince George's county, Maryland, and from such competent proof as may be exhibited to them within six months after the passage of this act, ascertain the quantity and value of their tobacco so destroyed, and that the amount so ascertained shall be paid out of any money in the treasury not otherwise appropriated, to the said legal representatives of Rinaldo Johnson, and of Ann E. Johnson, deceased.

IN THE SENATE OF THE UNITED STATES, *April* 16, 1852.

Mr. PRATT made the following report, (to accompany bill S. No. 366.)

The Committee of Claims, to whom were referred the petition of the widow of Rinaldo Johnson, and the petition of Hodges & Lansdale, providing indemnity for tobacco destroyed by the British in 1814, *have given the subject a thorough investigation, and now report:*

That Commodore Barney, in 1814, commanded the United States flotilla designed by the American government to protect the Chesapeake bay and its tributaries from the naval force of the enemy; that, to prevent the capture of the vessels under his command, he was compelled to abandon the Chesapeake, and was induced to sail up the Patuxent river, one of its tributaries, with the hope that the British would be unable, or at least unwilling, to follow with their larger vessels. This expectation of the commodore was not realized; he was pursued by the enemy, and was ultimately compelled to blow up his vessels to prevent their capture.

It is well known to the Senate that from this period the Patuxent river was permanently occupied by the naval forces of the enemy, and became the point from which various military expeditions were ordered against the surrounding country, terminating with the capture of Washington and the burning of the Capitol. General Winder was placed in command of this military division; the militia was called out to resist the landing of the British forces, and for a considerable period were successful in several instances in preventing the landing, and in all instances in driving the enemy back to their vessels.

It appears, from the evidence, that two public warehouses had been erected many years before this period, upon the margin of the Patuxent, for the inspection and deposite of the tobacco grown by the citizens of Prince George's county—one at the village of Nottingham, the other at Magruder's Ferry; that these houses were, in 1814, filled with hogsheads of tobacco, the property of the planters of that county, or of merchants who had purchased it for shipment; and that the tobacco for which remuneration is now claimed by the petitioner, R. Johnson, had been deposited in the warehouse at Magruder's Ferry; and that the tobacco for which payment is asked by Hodges & Lansdale, was deposited in the warehouse at Nottingham. The evidence conclusively establishes the fact that the warehouse at Magruder's Ferry was burned by the British, with all the tobacco it contained; and that all the tobacco in the warehouse at Nottingham was either taken away or burned by the enemy.

In investigating the right of the petitioners to indemnity from the federal government, your committee at once perceive that the petitioners could never have claimed indemnity under the general laws of 1816 and 1817, because the relief designed to be afforded by those acts *expressly and exclusively* applied to injuries to *real property*. The act of 1816 *provides "that any person* who, in the time aforesaid, has

sustained damages by the destruction of his or her *house* or *building* by the enemy, while the same was occupied as a military deposite under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage, provided it shall appear that such occupation was the cause of its destruction."

Your committee have been unable to recognize the force or propriety of the distinction which makes the United States liable for *real property* destroyed by the enemy, and which exempts the government from liability for *personal property* destroyed under the same circumstances; they are unable to appreciate the justice of a rule which makes the government liable for a house burned by the enemy, and exempts it from liability for the personal property burned in the house.

Your committee are of opinion that the United States should be held liable to reimburse her citizens whenever private property has been (in accordance with the usages of civilized warfare) destroyed by a public enemy, *because of its use* for military purposes by the authority of an officer or agent of the government.

Your committee believe that the facts, to which they will now very briefly advert, fully establish the right of the petitioners to relief, under the principle here laid down.

First. In reference to the warehouse at Magruder's Ferry, it appears that a considerable American force was stationed behind this warehouse, which, being filled with tobacco, afforded complete protection against the cannon of the enemy, and that a battle was fought with the British vessels, which continued until the ammunition of our troops was exhausted, and they were consequently obliged to retreat. It is clearly proven that upon the retreat of the American force, the British landed and burned the warehouse, with the tobacco of the petitioner, R. Johnson, and others, therein contained. In regard to the tobacco destroyed at the Nottingham warehouse, it appears that this warehouse was for a considerable time the depository of the military stores intended for the use of the militia employed in the defence of this exposed section of Maryland, and that upon one occasion the tobacco was rolled, by the directions of the officer in command, from this house, with which a breastwork was formed, from behind which the enemy were fought and repulsed. It also appears that when the enemy subsequently landed and proceeded to Washington, they destroyed or took away all the tobacco deposited in this warehouse which belonged to the petitioners, Hodges & Lansdale, and others.

Your committee further report that no possible doubt can exist as to the quantity of the tobacco which belonged to the petitioners, because it is evidenced by tobacco notes now in their possession, or deposited in the State Department, which designate each hogshead and the net weight of its contents. There are many precedents, to which your committee do not deem it necessary to refer, where the government have paid for personal property destroyed under similar circumstances. The value of the tobacco is also established by satisfactory proof, but the committee have deemed it better, in the bill which they have prepared for the relief of the petitioners, to provide that the proper

accounting officers of the treasury shall ascertain, from such proof as may be laid before them, the quantity and value of the tobacco destroyed, and shall pay the value so to be ascertained.

There being no distinction in principle in the right of the petitioners to relief, the committee have reported a bill for their joint relief, which they confidently recommend to the favorable consideration of the Senate.

IN THE SENATE OF THE UNITED STATES, *December* 21, 1853.

Mr. HAMLIN made the following report, (to accompany bill S. No. 50.)

The Committee on Commerce, to whom was referred the petition of Noah Miller, ask leave to submit the following report:

The petition referred is in the words and figures following, viz:

To the honorable the Senate and House of Representatives in Congress assembled, A. D. 1837:

Your petitioner, Noah Miller, of Lincolnville, in the State of Maine, respectfully represents:

That in the month of November, 1814, while the British troops were in possession of Castine, I, the said Noah Miller, hired a large whale boat, at Lincolnville, and four men, on wages, to intercept, in the bay, supplies that were expected to arrive at Castine, for the British troops, from Halifax. I procured the necessary arms and fitted out the boat, and made all proper arrangements for such an enterprise. I fortunately espied, near Turtle Head, in Penobscot bay, about five or six miles from Castine, a British vessel, for the capture of which I immediately made preparation. The vessel showed a number of men on deck. My force was four men besides myself. On approaching the vessel, I was mistaken for a pilot boat from Castine, sent out to pilot them in. The enemy was not undeceived till I had stationed my men at the proper positions on her deck, and approached to demand the helm, and informed the captain that he and his crew were my prisoners, and that his vessel was my prize. The vessel proved to be the schooner Mary, from Halifax, laden with bales of merchandise and a large amount of clothing for the British troops at Castine. As soon as the prisoners were disposed of for our safety, I put about and made all sail for Camden, a distance of twenty miles. These movements were espied from the heights near Castine. and immediate pursuit was made by the British, who pressed into their service an American pilot, who, by accident or design, ran the vessel aground, by which they were detained three hours, and enabled me to reach Camden with my prize. When all were secured, so that I could leave the helm, and on our way to Camden, I went into the

cabin, where was a lady in the greatest distress of mind, arising from apprehension of being massacred or of great ill usage, (for she had been told that the Americans were no better than savages.) She was the wife of the captain, and had retired to her berth in despair. I relieved her apprehensions with assurances of honorable protection. The captain had his furniture and goods on board, and was going to take up his residence at Castine, and engage in trade there. On arriving at Camden, I procured a boarding-house for the captain and his lady, engaging the kindest attention to them, at my own expense, while they should remain, and gave up to them all their furniture, goods, and effects, of every description, as I thought was becoming the American character to do.

Soon after the capture, and on our way to Camden, the supercargo of the Mary, Mr. McWalters, offered me £10,000 as a ransom for the schooner and cargo. I rejected the proposition. It would hardly have comported with the dictates of patriotism to have suffered the enemy to receive the "aid and comfort" of such a cargo of supplies, to enable them to maintain their position at Castine, and to annoy our commerce and our citizens at that commanding point. I declined the proposition while the enemy were under a press of sail to overtake us. There were on board the schooner Mary letters from sundry merchants and others in England, to the governor at Halifax, and by him transmitted to the British commander at Castine, which contained intelligence interesting to our government.

Apprehending great insecurity in the captured goods remaining at Camden, exposed as it was, I chartered a great number of wagons, and had them all conveyed the same night to Warren, Waldoborough, and afterwards to Portland, except what belonged to the crew and passengers on board the schooner, which I gave up to them. The next day the Furieuse 74, Commodore Muncy, appeared off Camden, and demanded the restoration of the British schooner and cargo. Commodore Muncy sent in a special message, conveying the threat, that unless I gave up the vessel, &c., he would have me at all events, and hang me up to the yard-arm; and by the same message, a public offer was made of a reward of $10,000 for my arrest and delivery on board the Furieuse, accompanied by threats to destroy the town. Under such influences, some of the citizens of Camden held a meeting, as I was informed, at which it was determined to arrest me, and deliver me up to Commodore Muncy. I made it hazardous, if not impracticable, to carry that resolution into effect. I immediately received from General King orders for calling out the militia in the neighboring towns, for the defence of Camden. I was then a major in the militia. I communicated the orders, the troops were raised, and I appeared personally among those who had resolved at a public meeting to arrest me, and deliver me to the British commodore, and was ready to render such services as I might be able, to defend them against the threatened attack of the common enemy. Josiah Hook, esq., was then the collector of the district of Castine. He appeared at Camden, and took *great interest in the captured vessel and cargo.* He advised me by all means to give both up to the goverment, on *whose account, as* collector, he would take possession, and proceed

against them as a seizure; telling me that was the only way to protect Camden and the country around; and that, as a private citizen, I had no right to make the capture. Others told me I had no right to the property captured; and though some expressed a different opinion, yet I yielded to the collector's views and solicitations, under a misapprehension, as I have recently been led to believe, of my legal and just rights. And I have no doubt, from subsequent events, that many if not most of those who counselled me to give up the prize to the government, and to the management of its revenue officer, were stimulated to give me such counsel by the collector himself; but I gave it up, notwithstanding all the hazard I had run to capture, and the trouble I had been at to secure it. But for this great error, committed under misapprehension of my rights, produced, as I have reason to believe, by the revenue officers of the government, I should not now have occasion from pecuniary necessity to present this petition to your honorable body; *thirty-three thousand eight hundred dollars* having been received into the treasury of the United States as a *moiety* of the net proceeds of the vessel and cargo, after condemnation and sale, which afterwards took place. While Commodore Muncy was off Camden, Mr. Hook procured Joseph Farley, esq., collector of the adjoining district of Waldoborough, to go on board of the Furieuse with the municipal authorities of Camden, and represent the facts of the case; and he did so. They informed Commodore Muncy that the capture was the private act of myself as an individual, unconnected with the government, and unauthorized by it; that neither the collector of Castine, nor any other officer of the government, had anything to do with it, nor had any interest in nor any control over the matter. They further represented that I had carried all the goods away, and secreted them, and therefore they could not restore them. This information, accompanied by suitable intercession in behalf of themselves and the people of Camden, had the effect to assuage the commodore's wrath against *them*, although it exposed *me* still more to the halter which dangled to the yard-arm of the Furieuse. The government's officers having made sure of the prize, the humble individual who had hazarded something in taking it, and had done the country "*some service*," was left to escape arrest by his own fellow-citizens, acting under the temporary lure of $10,000 reward, and to keep his neck out of the commodore's noose the best way he could. I was subsequently appointed an officer of the customs at Belfast, and in that capacity I made seizure of a large quantity of beef, belonging to one Whittier, of Belfast, on its way to Castine, to afford "aid and comfort" to the enemy. It was condemned and sold. Whittier swore vengeance against me, in which he had the countenance and support of a number of the citizens who were driving a profitable trade with the British, to which I had, as an officer of the customs, often presented *serious obstacles*. Whittier attacked me in the streets of Belfast with a knife, by which I was severely and dangerously wounded; the effects of which were disastrous to all my future hopes and prospects through life. I was rendered a helpless cripple, my nervous system was shattered, and I have been wholly unable to attend to any *sort of business whatever* from that time to this, for the

support of myself and my family. My condition is that of poverty and of helplessness, except from the justice of my country, whose coffers were replenished in its time of need at the expense of my own.

I therefore most respectfully, and, in my situation, must say *humbly*, pray that the proceeds of said schooner Mary and cargo may be restored to me, or such other measure of justice meted out to me as you in your wisdom may deem suitable and proper, under the circumstances of the case.

NOAH MILLER.

STATE OF MAINE, *Waldo, ss:*

Then personally appeared the above named Noah Miller, and made oath that the facts detailed in the foregoing petition, by him signed, relating to the capture, by him, as a private individual, and the subsequent disposition, of the British schooner Mary, and her cargo, in the late war, are true.

Before me:

JOSEPH MILLER,
Justice of the Peace.

NOVEMBER 20, 1837.

The occurrences related in the foregoing memorial must necessarily have been of general notoriety. *Material errors* in a statement of them could hardly have escaped detection, and are not therefore *to be presumed.*

The principal and most material facts stated seem sufficiently established by circumstances, and by extrinsic proofs. *Thus* sustained in prominent points, the inference is natural and fair, that the whole relation is true. It will be perceived, too, that the statement is verified by the oath of the memorialist. This cannot fail to strengthen the presumption of its correctness. Noah Miller possessed in a high degree, the respect and confidence of the community with which he was conversant. It is not lightly to be presumed that *such* a man, especially when under the solemn influences of an oath, even though he should indulge the belief that such perversion might strengthen the application he has submitted, would *intentionally* pervert the truth. A man so eminently distinguished by intrepid bravery, and by elevated love of country, is seldom found to unite in his character the opposite and degrading quality of sordid and mercenary selfishness. And it would accord still less with all reasonable probabilities, to suppose so of one who, when pressed by danger, not merely of loss of property, but of *life* even, could yet find, in the impulses of his own integrity and fidelity to his country, motives strong enough to impel him to reject the proffer made to him by the supercargo of the vessel he had so gallantly captured, of *ten thousand pounds*, (£10,000,) if he would suffer his prize to proceed to her destined port, there to strengthen the hands of the public enemy. Influenced by such considerations, and after a careful review of the proofs exhibited, your committee are constrained to believe that the facts alluded to are fairly and truly set out by the memorialist.

They are next led to inquire whether it accord with the past usages

of the government, to grant the prayer of the petitioner?—whether justice to the individual apylying, require it?—whether a policy just and wise, with reference to its continued and prospective influences upon the national interests and character, demand it?

In regard to the first mentioned topic, your committee ask leave to say that, from the earliest periods of our history, it is believed that the policy has always obtained, of assigning to captors an adequate portion of the avails of all prizes made upon the ocean, *flagrante bello*. By the act of April 23, 1800, "for the better government of the navy of the United States," (3d vol. United States Laws, p. 360, sec. 5,) it is provided, "That the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture." Similar provisions are found in the act of June 28, 1798, (vol. 3, U. S. Laws, pp. 71, 72.) The *principle*, it is believed, has always obtained. It is true that these provisions are made with reference to the *navy of the United States*, or the *public armed vessels* of the nation. But the *reason* upon which that policy is founded is still *more* manifestly apparent in the case of captures thus made by the unaided means, skill, enterprise, and courage of *individual* citizens. The United States, in this class of causes, furnishing *no portion of the force*, incurring *no part of the risk*, and being in no wise the meritorious cause of the capture, can, *in justice*, claim *no part of the proceeds*. Nor is this rule, thus modified, without the sanction of Congress. An express recognition of it may be found in the acts of June 25, 1798, (3d vol. U. S. Laws, p. 69, sec. 2,) and of 26th June, 1812, (4th vol. U. S. Laws, p. 450, sec. 4,) and in the acts of March 3, 1813, (4th vol. U. S. Laws, p. 518,) of August 2, 1813, (vol. 4, Laws U. S., pp. 625 and 656;) and in other acts, the principle is carried so far as to require the payment to individual citizens of a *bounty* for the *destruction* of vessels of the enemy, and a bo nty for *prisoners taken, out of the public treasury*. No doubt, then, it is believed, will be entertained, but that it accords with the ordinary jurisprudence of the country and with the whole course of its legislation, to concede to the captors, in such a case as this, the *entire* proceeds of the prize. But it may be objected, that *this case* has been actually *adjudicated* upon, and the proceeds of the capture *disposed* of according to the provisions of the revenue laws—the one moiety having been paid, some thirty years ago, into the treasury of the United States, and the other moiety distributed between the collector (Mr. Hook) and those who assisted at the capture, and perhaps to others. Such an objection, so far as relates to such *individuals* as may have received distributary shares of the proceeds of the capture, your committee think is entitled to much consideration.

It would be of a dangerous consequence if Congress were to attempt to disturb that distribution, so long ago made—made, probably, under the sanction of the government for the time being. And even if it were of *less injurious or less doubtful* policy, it would not probably be

deemed *competent* for Congress thus to interfere. Fortunately, perhaps, for the memorialist, even on *this* point there are "precedents on file." The case presented to Congress in 1814, and which resulted in "An act for the relief of David Porter, and his officers and crews," was in some respects analogous to this.—(See vol. 4, Laws U. S., p. 683.) Decrees of condemnation had been rendered in like manner; but, by the law referred to *that portion only* of the proceeds of the captures made, *which had accrued to the United States*, was directed to be relinquished and paid over to the captors. So in the case of the captures made near the island of Barrataria, in September, 1814, by Colonel George F. Ross and Captain Daniel Patterson; "*so much* of the net proceeds of the forfeiture and penalties, not exceeding $50,000, as *accrued to the United States*, by the decree of condemnation rendered *for a violation of the laws of the United States*," was directed to be paid over to the captors—(see vol. 6, Laws U. S., pp. 118, 171)—leaving, in both cases, such distribution as may have been made to *individuals*, under color of the revenue laws, *undisturbed;* thus furnishing precedents strongly enforcing the general principle, and at the same time illustrating the exception. Assuming, then, that the principal facts in this case are sufficiently established, and that, with the limitations herein above explained, it accords with past usages of the government in similar cases to grant the relief prayed for, it remains next to consider how far *justice* to the memorialist requires it. To arrive at a proper conclusion on this point, it is very necessary to have regard to the condition of the country at the time and place where the transactions alluded to occurred. It is not the desire of your committee, nor would it be appropriate, to crowd into this report any unnecessary matter of historical detail; but it may not be improper to call to the recollection of the Senate, that at the period alluded to Castine was in the possession of the enemy; his vessels of war were hovering over the coasts, and in great force commanding the bay. What his ulterior intentions may have been, is left, perhaps, in some sort, to conjecture; but, cut off as he was, from direct intercourse with the interior, it was of the utmost importance to intercept also his supplies, and to diminish his resources, in their progress up the bay. Fully and completely to accomplish that end, a superior naval force was undoubtedly requisite. But *such* a naval force the government had not then, at that point, in its control. In *such* circumstances, what resource remained but that which was to be sought for in the adventurous enterprise, the active vigilance, the hardy courage, and the ardent and devoted patriotism, of its unsupported individual citizens? There was no other. And happily for the country, and for the honor of its people, that resource, in *such an exigency*, did not fail! Many there doubtless were, who, on that memorable occasion, were distinguished by their devotion to their country, and by their brave and gallant bearing; but among them, none seemed more conspicuous than Noah Miller. Alfred Johnson whose affidavit is appended to this report, testifies of him, that "Major Miller was a very active officer of the militia, and signalized himself as an efficient partisan, and a vigilant observer of the movements of the enemy in *our vicinity; and* it is my opinion, that no one person in this quarter

was oftener mentioned as a brave and useful friend of his country during that war. About one year, according to my best recollection, he was in the actual service of the United States as a captain of volunteers; and, after the expiration of this service, it was understood—and I have no reason to doubt it—that he was in the revenue department of the government—in what capacity, or whether officially or as a volunteer, I cannot say—and assisted to prevent an illicit intercourse with the enemy. He received a wound in a personal rencounter, growing out of his said employment. During the war he made a capture of a valuable vessel and cargo, attempting to introduce goods of the enemy into this country; and, in doing this, it was at the time the general opinion that the said capture was made by him as a private citizen, at his own risk, responsibility, and expense."

William P. Preble, esq., who, as district attorney of the United States, conducted the prosecution which resulted in the condemnation of the captured vessel, and whose deposition is also hereto appended, thus testifies of the memorialist: "I well remember said Miller was in those days distinguished for his zeal and activity (*after* I knew him) in carrying on a partisan warfare against the enemy and the contraband trade carried on with them in that quarter, while the British forces were in possession of Castine." And in respect to the capture he made, he says: "I further depose and say, that it was well understood and notorious that said Mary and cargo *were in fact captured* and seized by Major Noah Miller, who, having discovered the vessel from the shore, put off in a boat with a small crew, and took possession of her, and brought her into Camden; and that the capture was *wholly* due to the activity and enterprise of said Miller and his assistants. I further depose, that I well remember it was understood at that time that said Miller met with a good deal of difficulty in securing the property after its capture, and that it was wholly owing to his active exertions, aided by his boatmen, that the property was removed to a place of safety; and that, if it had not been so removed, it would have been rescued by the enemy's armed forces then in the vicinity. I have since understood, and now fully believe, that said Miller, in making said capture, and securing said property, *acted solely from his own promptings*, and in no respect under the authority and instructions of Mr. Hook, the collector."

Mr. Preble, in a subsequent communication, again says: "The act of the capture was an act of Miller's own devising and enterprise, unprompted by any one, and unaided by any one except his boat's crew. Miller continued afterwards in the United States service as inspector, and until our troubles of that period ceased, and was very active, vigilant, and enterprising, and *no man did better service* than he. He was the *terror* of smugglers and traders with the enemy. More than once he barely escaped with his life; so that it became necessary to caution him to be less venturesome and daring."

These extracts are made for the purpose of vindicating the character of the memorialist, and the nature of the important services he rendered.

A more minute examination of the proofs will sufficiently demonstrate, that in *respect to the particular* transaction upon which his

application is founded, the conception of the plan, and the enterprise itself, *were all his own;* the risk and the danger of its execution were emphatically his; and he alone was originally responsible for the *entire expense.* With what skill, and perseverance, and gallantry, the enterprise was accomplished, also appears. If, by such exploits, the public enemy were more straitened in their quarters—if they were harrassed by repeated alarms—if their supplies were cut off, or their resources diminished—these and all other *military* advantages resulting from them belonged to the country, and the country has received them. But it is not perceived on what principle of natural justice this memorialist should be deprived of the pecuniary fruits of his own, his individual and voluntary enterprise—an enterprise conceived in boldness, and executed with consummate address, and at great peril of life. "The laborer," it is said, "is worthy of his hire." And this government, whose strength consists in the affections of the people, and in the confidence which *they* have in its liberal justice, should be the last to render itself justly obnoxious to the imputation of "reaping where it has not sown, and gathering where it has in no wise strewed."

It is not only just, then, your committee venture respectfully to say, that whatsoever has accrued to the national treasury solely by reason of the individual efforts, skill, and gallant conduct of the memorialist, should be returned to him, but wise, also, and in accordance with the dictates of the soundest policy. Incentives to patriotism and to virtue cannot be too much multiplied; nor is anything unimportant which may in future affect the character or moral sentiment of the nation. What lustre has been reflected upon the national character by those individual acts of intrepidity, so bold in design, so skillful and so perilous in their execution, which, when the pressure of war was upon us, have sometimes illustrated the career of those in private life, as well as adorned the characters of those in the public employ! It is fit that they should be brought out in bold relief, and inscribed on the public archives! And who that values inflexible patriotism and incorruptible integrity, looking forward to the future, would desire to see that page torn from our history, which records that honors were awarded, and pecuniary rewards were given, to such men as Paulding, Williams, and Van Wert? In short, it seems to result that justice, the past practices of the government, and a wise and sound policy, all tend to sustain the principle upon which the application of the memorialist is based. But there are yet difficulties which embarass greatly the further progress of the committee towards a just and satisfactory conclusion.

No doubt, it is believed, can exist, but that the enterprise which resulted in the capture of the Mary, and of the clothing and supplies for the British troops at Castine, and the other articles of British merchandise on board, originated *exclusively* with the memorialist. No doubt is entertained but that he alone hired the small boat which was employed in the capture; and that he alone, and on his *own account* hired, on *stipulated wages,* the men employed in the operation. It was *he* who became *insurer* against the risk, and he alone who became *personally* responsible for the payment of the men, and the hire

of the boat; and *that* responsibility, it is presumed, he faithfully discharged. It is very plainly inferable, also, from the exhibits, that in addition to their stipulated wages, the men so employed by the memorialist, and a Major Ulmer, (of whom respectful mention is made in the exhibits, and who was taken on board of the prize after her capture, in order that she might be more safely and more certainly conducted into Camden,) received out of the proceeds of the capture a thousand dollars or more, each, as *their* proportion, respectively, of the proceeds which were distributed. But it is urged, in behalf of those men, if it should be the opinion of Congress that the memorialist receive any part of that moiety which was paid into the national treasury, that *then they* ought, respectively, to receive some suitable proportion of it also. When expeditions of this sort have heretofore, in time of war, been undertaken and fitted out *solely* by individual and private means, and such expeditions have resulted in making prize of the vessels of the enemy, it is believed to have been the policy of the law to leave the distribution of the proceeds of the prize to be determined by *such contract* or agreement as may have been made by the undertaker with the men he employs. But if *no contract* exist between them in this regard, then it is supposed to have been the policy of the law to require that those proceeds should be distributed according to the rule of proportion adopted in the naval service of the United States. In *this* case your committee are not satisfied that *any* claim is justly and fairly made out, except that of the memorialist; and yet, in the view of the supposed rule of policy alluded to, they are not prepared to say that none can exist. And they do not desire, by anticipation, and by a proposed disposition of the whole fund, to preclude it.

The present application seems to have been before Congress for many years. And in the one or the other House, several reports, all of them in favor of the claim, are said to have been made upon it. But so far as your committee are advised, no final action has, in either House, been had upon it. In February, 1838, the subject was very elaborately discussed, in a report made by the Committee on Commerce of the Senate, and the justice of the claim very strongly urged. During the last session of the Senate the memorial was again referred to the same committee, and that committee adopted, *in extenso*, the report alluded to of 1838, and introduced a bill in accordance with it; but that bill was not finally acted upon.

And now a rumor exists (of the truth of which, however, your committee have no knowledge) that the memorialist is dead. But if the fact be so, it can hardly be considered as requiring any other change in the action of the Senate upon it, except that of so shaping its legislation as that the legal representatives of the memorialist may be enabled to receive whatsoever sum shall be appropriated. The *justice* of the claim will be the same, the policy of allowing it the same, and the moral and political right of the government to retain the money it has so received can be in no wise strengthened by that event.

The bill reported to the Senate in 1838, and recommended to its favor by its committee, purported to award to the memorialist ten thousand dollars, *that sum being less than* one-third of that part of

the net proceeds of the capture which went into the national treasury. The Committee on Commerce, to which the memorial was referred during the last session of the Senate, recommended the appropriation of the same sum.

And although it may not comport fully with the grounds assumed by your committee, and the reasoning which they have endeavored, in this report, to enforce, to limit the proposed appropriation to so small a part of the money which has been paid over to the government in consequence of the capture, yet, in view of the difficulties hereinbefore adverted to, and not uninfluenced in this regard by the concurring opinions heretofore expressed by the committees to which the subject had been at different times referred, they have deemed it expedient again to recommend the appropriation of the same sum.

In conformity with this determination, they accordingly herewith present a bill, and respectfully recommend it to the favorable consideration of the Senate.

Noah Miller is now deceased, and the bill reported is for the relief of his legal representatives, and others interested therein, to be paid in such proportion to each as the Secretary of the Treasury shall determine.

No. 1.

I, David Alden, of Northport, in the State of Maine, do testify and say: That, some time in the month of November, in the year 1814, I was on the shore of Penobscot bay, in said town of Northport, about twelve miles from Castine. I saw a boat board a sloop in the bay. Directly after they stood in for the land where I then was, and when they had got near the shore, the boat came on shore, and I found the commander of the boat to be Major Noah Miller, of Northport, and he had two Englishmen with him. One of them said he was the supercargo of the sloop; and he called me one side, and offered me one thousand dollars if I would persuade Major Miller to ransom the sloop; but I advised Major Miller not to ransom the sloop. The sloop went down the bay off against Lincolnville, and there stopped. Major Miller, myself, and the supercargo of the sloop went down to Lincolnville by land, and the sloop was waiting there. While we were there we fell in with two gentlemen, Major Philip Ulmer and John Wilson. I heard the supercargo, who said his name was McWaters, offer Ulmer and Wilson each one thousand dollars if they would advise Major Miller to give up the sloop. Soon after this, Major Miller and the supercargo went on board the sloop, and proceeded for Camden. I understood said sloop was the English sloop Mary.

DAVID ALDEN.

STATE OF MAINE, } ss.
Waldo.

Personally appeared the above named David Alden, and made oath that the foregoing deposition, by him subscribed, is true. Before me,

JOSEPH MILLER,
Justice of the Peace.

NOVEMBER 23, 1837.

STATE OF MAINE, } ss.
Waldo.

I, Nathaniel M. Lowney, clerk of the judicial courts for the county of Waldo, certify that Joseph Miller is a magistrate in and for said county, and that the foregoing signature, purporting to be his, is genuine. I further certify, that the within named David Alden is well known to me; that he is a man of truth, and that his declarations on oath are entitled to credit.

In testimony whereof, I have hereunto affixed the seal of the supreme judicial court of said State, and subscribed my name, this 24th day of November, A. D. 1837. [L. S.]

N. M. LOWNEY,
Clerk of the courts for said county.

No. 2.

I, Charles Thomas, of Lincolnville, State of Maine, testify and say: That some time in the month of October, in the year 1814, Major Noah Miller, of Northport, came to me, and wished to hire a boat which I owned, for the purpose of cruising in Penobscot bay, in order to intercept and capture such English vessels as might be bound to Castine with supplies for the British troops, who were then in possession of Castine. I declined hiring my boat to him unless I could go with the boat. Major Miller said he wanted to hire men to go with him, and he would hire me. Major Miller said he would give me two dollars per day for my services, and one dollar per day for the use of the boat. I agreed to go with him for that sum. I accordingly took my boat and went a cruising with Major Miller a number of days in Belfast and Penobscot bays. Not falling in with any English vessels, after cruising a number of days, I returned home to Lincolnville, and left my boat in the charge of Major Miller, who was the captain of our crew. In a few days after I returned home, Major Miller took my boat and went out in the bay off against Northport, and captured an English sloop, bound to Castine, with supplies for the troops, &c. After Major Miller captured the sloop, he returned my boat to me, and paid me for the use of it, and also for my services. I always thought that *Major Miller acted as a private* citizen in all his priva-

teering expeditions against the British during the war, and that he acted in that capacity when he captured the English sloop Mary. I never heard a word said about Major Miller being a revenue officer at that time.

CHARLES THOMAS.

STATE OF MAINE, } ss.
Waldo county }

Personally appeared before me the above named Charles Thomas, and made oath that the foregoing deposition, by him subscribed, is true. I further certify, that I am personally acquainted with the said Charles Thomas, and that his declarations, under oath, are entitled to credit.

JOSEPH MILLER,
Justice of the Peace.

DECEMBER 9, 1837.

STATE OF MAINE, } ss.
Waldo county. }

I, Nathaniel M. Lowney, clerk of the judicial courts for said county, certify that Joseph Miller is a magistrate for said county, and that the foregoing signature, purporting to be his, is genuine.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the supreme judicial court of said State, this [L. S.] 15th day of December, in the year of our Lord 1837.

N. M. LOWNEY.
Clerk of the courts for said county.

No. 3.

I, Alfred Johnson, of Belfast, Maine, of lawful age, testify and say: That I resided in Belfast aforesaid during the late war between the United States and Great Britain, and was well acquainted with Major Noah Miller, of Northport, an adjoining town. Major Miller was a very active officer of the militia, and signalized himself as an efficient partizan and a vigilant observer of the movements of the enemy in our vicinity; and it is my opinion that no one person in this quarter was oftener mentioned as a brave and useful friend of his country during that war. About one year, according to my best recollection, he was in the actual service of the United States as a captain of volunteers; and after the expiration of this service, it was understood—and I have no reason to doubt it—that he was in the revenue department of the government—in what capacity, or whether officially or *as a volunteer,* I cannot say—and assisted to prevent an illicit inter-

course with the enemy. He received a wound in a personal rencounter growing out of his said employment. During the war, he made a capture of a valuable vessel and cargo, attempting to introduce goods of the enemy into this country. And in doing this, it was at the time the general opinion that the said capture was made by him as a private citizen, at his own risk, responsibility, and expense.

ALFRED JOHNSON.

—

STATE OF MAINE, } ss.
Waldo.

Personally appeared the above named Alfred Johnson, and made oath to the foregoing deposition, as truth. Before me.

JOSEPH MILLER,
Justice of the Peace.

NOVEMBER 24, 1837.

—

STATE OF MAINE, } ss.
Waldo county.

I, Nathaniel M. Lowney, clerk of the courts for said county, certify that Joseph Miller is a magistrate for said county of Waldo, and that the foregoing signature, purporting to be his, is genuine. I further certify, that the within named Alfred Johnson is well known to me; that he is judge of the court of probate for said county, and that his declarations, on oath, are entitled to credit.

In testimony whereof, I have hereunto affixed the seal of the supreme judicial court of said State, and subscribed my name, this 24th day of November, in the year of our Lord 1837 [L. S.]

N. M. LOWNEY,
Clerk of the courts for said county.

No. 4.

I, William P. Preble, of Portland, in the State of Maine, depose and say: That in the month of November, A. D. 1814, Josiah Hook, collector of customs for the district of Penobscot, reported to me, at that time attorney of the United States for Maine district, the sloop Mary and cargo, as being then in his possession and custody, to the end that said vessel and cargo might be proceeded against, condemned and confiscated to the United States. I accordingly drew a libel, and filed the same in the district court, setting forth the facts as reported to me by said Hook, the collector; and the property was afterwards, in due time, condemned and confiscated to the United States. The place where the Mary was captured and seized it appeared was in Mr. Hook's *district, and within the waters* of the United States; and

the property, by the then existing statutes, was liable to seizure and forfeiture, without regard to the fact of its being enemy's property. Hence, as well as I can remember, the collector claimed a right to take the property into his possession, and to receive and account with the government for the proceeds.

I further depose and say: That it was well understood and notorious that said Mary and cargo were, in fact, captured and seized by Major Noah Miller, who, having discovered the vessel from the shore, put off in a boat, with a small crew, and took possession of her, and brought her into Camden; and that the capture was wholly due to the activity and enterprise of said Miller and his assistants.

I further depose: That I well remember it was understood at that time that said Miller met with a good deal of difficulty in securing the property after its capture, and that it was wholly owing to his active exertions, aided by his boatmen, that the property was removed to a place of safety, and that, if it had not been so removed, it would have been rescued by the enemy's armed forces then in the vicinity. I have since understood, and now fully believe, that said Miller, in making said capture, and securing said property, acted solely from his own promptings, and in no respect under the authority and instructions of Mr. Hook, the collector.

And I further depose: That I well remember said Miller was in those days distinguished for his zeal and activity (after I knew him) in carrying on a partizan warfare against the enemy, and the contraband trade carried on with them in that quarter, while the British forces were in possession of Castine.

WILLIAM P. PREBLE.

—

CUMBERLAND, *ss.*

Then personally appeared William Pitt Preble, and made oath that the foregoing statement, by him subscribed, is true, according to the best of his knowledge, recollection, and belief. Before me,

JOHN L. MEGQUIER,
Justice of the Peace.

AUGUST 18, 1837.

No. 5.

Extract from the testimony of Philip Ulmer, taken in 1814, *to be used, as is understood, in court, in the case of the Mary.*

Answer to the 3d interrogatory: The sloop Mary was taken in Penobscot bay, as I was informed, by Captain Miller, being English property. About two hours after her capture the sloop was brought into Camden. Sailed under British colors. No resistance made. Seized by the revenue officers.

Answer to the 5th interrogatory: The sloop is about sixty tons.

There were six men on board, officer included, and a lady, the captain's wife. They all appeared to be English or Irish. The captain said he had lived in Halifax about ten years. I do not know when or where they came on board.

Answer to the 32d interrogatory: I have stated all I know, except the conversation I had with Mr. McWaters, relative to a ransom, and the captain. After McWaters had offered Captain Miller £10,000 to ransom the vessel, and me £1,000 if I would not interfere to prevent the ransom, the captain then told me the property was all British; that they were but four days from Halifax, and that they were towed all the passage by the sloop-of-war Pelter.

No. 6.

WASHINGTON, *June* 24, 1842.

GENTLEMEN: Having been requested, in behalf of Major Noah Miller, to communicate to your committee certain facts in relation to a capture made by him at a late period of the last war with Great Britain, which is the foundation of a claim on his part now under your consideration, I have the honor to state that I was the person who then held the office of district attorney for Maine. Immediately after Miller had made the capture, he found himself troubled by the pretensions of certain persons then in the military service, who seemed to have claims to a share of the prize, from the fact that the troops on shore were in sight. Major Miller was ignorant how to proceed with the property, or what to do with it. It was in imminent danger of recapture, if not removed, and he had no means of removing it, besides the risk of incurring a forfeiture. Under these circumstances, he applied for aid to the collector of the district. The collector accordingly took charge of the property, and had it removed, secured, and condemned. After condemnation, the proceeds were paid over to the collector, to be by him disposed of and accounted for according to law. I had understood that Miller was an officer of the customs at the time of the capture, and the date of his commission as inspector indicated the fact to be so. I learned afterwards that the commission was purposely ante-dated; and the fact was undoubtedly so. The act of the capture was an act of Miller's own devising and enterprise, unprompted by any one, and unaided by any one except his boat's crew. Miller continued afterwards in the United States service as inspector, and until our troubles of that period ceased, and was very active, vigilant, and enterprising; and no man did better service than he. He was the terror of smugglers and traders with the enemy. More than once he barely escaped with his life, so that it became necessary to caution him to be less venturesome and daring.

With great respect, gentlemen, your obedient servant,

WILLIAM P. PREBLE.

The COMMITTEE *to whom is committed the petition of Noah Miller.*

No. 7.

I, Samuel A. Whitney, of Lincolnville, in the county of Waldo and State of Maine, on oath, do say: That in the fall of 1814, while the British forces were at Castine, Major Noah Miller came on shore from a sloop then lying off this place, and informed me and others that he and others had taken possession of the aforenamed vessel; that she was an English vessel, bound from St. John's to Castine, laden with English goods; that they took her in Penobscot bay within a few miles of Castine, and wanted to get Major Philip Ulmer to go with him on board, to take charge of her, to take her into some place of safety, (Major Ulmer being a custom-house officer, seaman, and pilot;) that the said Ulmer did go on board with said Miller, and took said vessel into the harbor of Camden, and immediately landed the goods, and caused them to be transported overland to the town of Warren, for safety; that the next day an English frigate went from Castine, anchored off Camden, and sent in a demand for the goods; and Camden had to give up hostages, to prevent damage being done to the town, which were carried off.

I further say, that Christina, wife of Paul H. Stevens, esq., Susan, wife of Samuel Buckmer, and Grace, wife of Job White, are the daughters and heirs-at-law of the aforesaid Philip Ulmer, deceased.

SAMUEL A. WHITNEY.

WALDO, *ss.*

Then personally appeared the above named Samued A. Whitney, and made oath to the truth of the above deposition, by him subscribed. Before me.

JACOB S. ADAMS, *J. P.*

DECEMBER 3, 1838.

No. 8.

THOMASTON, MAINE, *December* 3, 1841.

MY DEAR SIR: In behalf of a very worthy but unfortunate man, allow me to call your attention to the claim of *Noah Miller*. It is desirable that it should be *early* reported, in order that it may stand a chance of going to the other House in season to obtain the action of that body. It has passed the Senate three or four times, having received the unanimous sanction of the Committee on Commerce from the first examination of the subject in 1838. Let me refer you to Governor Davis' report on the subject, with accompanying documents—being Doc. No. 204, 2d session 25th Congress. The late chairman, Mr. King, has advocated it. I presume it will find no opposition.

You will perceive that the bill which passed the two last sessions appropriates $7,500 for Miller, and $2,500 for others, instead of the $10,000 for Miller alone. This was a sort of compromise, assented to by Miller and others, to avoid collision and delay, though, in point of fact,

Miller has the sole claim. I hope no modification more unfavorable to Major Miller will be consented to on any account. Governor Davis, just before he resigned his seat, said to me that he felt deep interest in this claim of Major Miller, and regretted that any compromise (referred to above) had been assented to. He said that Miller was shown to be a very deserving man, and ought not to divide with any one. He yielded to it only because Miller himself assented; and that, he thought, was hardly a sufficient reason. He spoke with some feeling about it.

I will not trouble you further now than to ask the favor of your making as *early* a report of a bill as practicable, if the committee see no objections. If there should be anything that may require explanation before the Senate act upon it, I will thank you to apprize me of it.

Wishing you, my dear sir, a pleasant, useful, and *harmonious* session, I remain, very respectfully and faithfully, your obedient servant,

JOHN RUGGLES.

Hon. JABEZ W. HUNTINGTON,
Senator, United States.

P. S. The bill referred to has twice or three times received the *favorable* consideration of the House committee, but it has never been reached by the House.

No. 9.

I, John Studley, of Lincolnville, in the county of Waldo and State of Maine, of lawful age, do testify and say: That, in the fall of 1814, the British sloop Mary was captured by Noah Miller and others, and hove to in Penobscot bay, near where I lived, about seven miles from Camden.—Miller came on shore, and got Major Philip Ulmer to go on board and take charge of her and carry her into Camden, he being a revenue officer; which was effected the same day, and her cargo discharged.

And I further say, Christina Stevens, Susan Buckmer, and Grace White, are children and lawful heirs of the said Philip Ulmer.

JOHN STUDLEY.

WALDO, *ss:*

Then the above named deponent personally, appeared and made oath to the foregoing deposition, by him subscribed, to be true. Before me,

DAVID McKOY, *J. P.*

NOVEMBER 30, 1818.

No. 10

I, Jacob S. Adams, of lawful age, do testify and say: That, in the fall of 1814, I *resided at Lincolnville,* in the county of Waldo and

State of Maine. I was at the shore at the time, and saw Major Philip Ulmer, together with Major Noah Miller, go on board the British sloop Mary, then lying in the bay. The report was, that they were going with him to Camden. I then went immediately to Camden by land, and met the sloop there. Major Philip Ulmer was on board said sloop, and appeared to have the command of her, and appeared to take an active part and be principal in unlading her and securing the goods.

And I further say, that Christina Stevens, Susan Buckmer, and Grace White, are children and lawful heirs of said Major Philip Ulmer, deceased.

JACOB S. ADAMS.

WALDO, *ss.*

Then the above named deponent personally appeared, and made oath to the foregoing deposition, by him subscribed, to be true.

DAVID McKOY, *J. P.*

DECEMBER 1, 1838.

No. 11.

LINCOLNVILLE, *December* 5, 1843.

DEAR SIR; The circumstances concerning the claims of the heirs of Major Philip Ulmer, late of Lincolnville, I will briefly relate: In the fall of 1814, Noah Miller, with three or four others, boarded a British sloop, with a valuable cargo on board, in Penobscot bay, about five or six miles from the British fleet, then lying at Castine. After securing the crew, Miller left the prize in charge of his men, and went on shore to procure the assistance of Major Ulmer, then a shipmaster and pilot, who immediately went on board, took charge of the prize, and, at the imminent risk of being retaken by the British, carried her into Camden, where the cargo was taken out, sent to Portland, and sold, government taking a large proportion, (which has since been proved does not belong to it,) the rest being divided among the crew, Major Ulmer receiving an equal share for his important services; and, sir, what we petition for is, that his heirs may receive a share of that which was awarded to government.

With great esteem, I am yours, &c.,

PAUL H. STEVENS.

Hon. GEORGE EVANS.

P. S —Should you, sir, use your influence with the other members, you will secure our warmest gratitude.

P. H. S.

No. 12.

I hereby certify, that I have been personally acquainted with Major Noah Miller, of Lincolnville, in the State of Maine, since June, 1821.

At the time of my first acquaintance he was affected with paralysis of the inferior extremities, to such a degree as to render them entirely useless. His general health was very much impaired, and his difficulties gradually increasing for ten or twelve years, during a considerable part of which time he was perfectly helpless, and his life despaired of. He has recovered so far as to be able, by the assistance of crutches, to support the weight of his body and move a short distance; and his general health has within a year or two somewhat improved. He is still, however, unable to walk without assistance. During his protracted illness, I have been frequently consulted, affording ample opportunity to learn his real condition. When I first saw him, he informed me that he had been in his present condition for some five or six years, it having introduced itself instantaneously. He shows a scar in his right hand, from a wound which has nearly deprived him of its use, which (I have been informed by the surgeon who attended it) was received during the last war, while endeavoring to prevent a man from conveying supplies to the enemy at Castine.

J. P. ALDEN, *M. D.*

STATE OF MAINE, *Waldo, ss.*

Personally appeared the above named J. P. Alden, and made oath to the truth of the foregoing deposition, by him subscribed. Before me.

OSEPH MILLER,
Justice of the Peace.

NOVEMBER 24, 1837.

STATE OF MAINE, *Waldo, ss.*

I, Nathaniel M. Lowney, clerk of the courts for said county, certify that Joseph Miller is a magistrate for said county, and that the foregoing signature, purporting to be his, is genuine. I further certify that the within named J. P. Alden is well known to me; that he is a man of truth, and that his declarations on oath are entitled to credit.

In testimony whereof I have hereunto affixed the seal of the supreme judicial court of said State, and subscribed my name, this twenty-fourth day of November, A. D. 1837. [L. S.]

N. M. LOWNEY,
Clerk of the courts of said county.

No. 13.

UNITED STATES OF AMERICA.

DISTRICT OF MAINE, *ss.*

To the Hon. David Sewall, Esq., Judge of the District Court of the United States in and for the Maine District.

Be it remembered, that William P. Preble, attorney for the United States in and *for Maine district, in his* proper person, comes before

the said judge, and as well in behalf of said States as of Josiah Hook, esq., collector of the district of Penobscot, and of all others whom it may concern, libels, propounds, and gives the said judge to understand and be informed, that since the declaration of war between the United States of America and the United Kingdom of Great Britain and Ireland, and during the continuance of the same, (to wit, on the first day of November instant,) the said Hook, by virtue of his commission as collector aforesaid, did, in and with a revenue boat of said States, and with the assistance of Noah Miller, an inspector of the customs for said district of Penobscot, acting under and by the order of said Hook, subdue, seize, capture, and take the vessel or sloop called the Mary, whereof Benjamin Darling or Dalling was master, and her cargo on board said vessel, and afterwards, on the same day, did bring the said vessel and cargo into the port of Camden, in said district of Maine, where she now lies, for adjudication. And the said attorney further propounds and says, that, at the time of said capture and seizure, the said vessel, her tackle, apparel, and furniture, and her cargo, did belong to the King of said United Kingdom, or to some subject or subjects thereof, and as such, or otherwise, liable to capture in manner aforesaid, and to be condemned or confiscated to said States; all which is public and notorious, of which due proof being made, the said vessel, her tackle, apparel, and furniture, and her cargo, ought to be decreed and adjudged forfeit to the use of said States.

Wherefore, the said attorney prays the advisement of this court here in the premises, and that due process and monition may be had in this behalf, according to the course of admiralty proceedings in such cases; and that the said vessel, her tackle, apparel and furniture, and her cargo aforesaid, may, by the definitive sentence of this court, be adjudged and decreed forfeit and confiscated to said States, and the proceeds thereof be disposed of according to law.

Dated this 17th day of November, A. D., 1814.

Filed this 17th November, 1814.

W. P. PREBLE,
U. S. Attorney, Maine District, and proctor to J. Hook.

UNITED STATES, MAINE DISTRICT, *ss.*

DISTRICT COURT, CLERK'S OFFICE,
August 17, 1837.

In testimony that the foregoing is truly copied from the original on file in this office, I have hereto set my hand, and affixed the [L. S.] seal of the district court, the day and year above written.

JOHN MUSSEY,
Clerk United States Courts.

No. 14.

DISTRICT OF MAINE, *ss.*

The President of the United States of America to the Marshal of our District of Maine, or his deputy, greeting:

Whereas, by the sentence of our judge of our district court, begun and holden at Portland, within and for our district of Maine, on the first Tuesday of December, 1814, a decree of condemnation was obtained by the United States against the sloop Mary and cargo, except three trunks of goods and articles, marked No. 378, No. 379, and No. 380, captured and seized by the collector of Penobscot, as to us appears of record, whereof execution remains to be done:

We command you, therefore, that you cause the said sloop Mary and cargo, except as aforesaid, to be sold at public auction to the highest bidder, at Portland, within our said district, after first giving public notice of the time and place of such sale, as our law directs. And the moneys arising from said sale, after deducting twelve hundred and sixty-four dollars fifty-eight cents, the costs of prosecution, and one dollar for this precept, together with your own proper fees and charges, you will dispose of as follows, viz: one moiety to be paid into the treasury of the United States, and the other moiety to the collector of the district of Penobscot, for the uses prescribed by our law in such cases made and provided; and make return of this writ, with your doings herein, into our said court, to be holden at Wiscasset the last Tuesday of February next.

Witness David Sewell, esq., at Portland, the fifteenth day of December, in the year of our Lord one thousand eight hundred and fourteen.

[L. S.] H. SEWALL, *Clerk.*

N. B. The return of the doings on this writ is annexed by seals.

Attest: HY. THORNTON, *Marshal.*

MAINE, *ss.*

Pursuant to the annexed warrant of sale, I advertised the time and place of sale of the sloop Mary and cargo, according to law, in the Portland, Boston, and New York newspapers, and on the day of sale advertised, viz: January 5, sold at public auction to the highest bidders that part of the cargo advertised for sale in Portland (the other part and the said sloop Mary being sold by deputy Tebbets, as per his account annexed) to sundry persons, as per account annexed; the amount of, as per said account, being sixty-five thousand nine hundred and forty-three dollars and fifty-two cents, viz: $65,943 52

From which I deduct the following costs and charges, viz:

Court bill of costs, as taxed by the court.....	$1,265 58
Advertising in Portland, $5; extra advertising, New York, *&c., $20*.....	25 00

Service precept, $2; commision on $500, at 2¼ per cent., $12 50; commission on $65,443 52, at 1¼, $818 04	$832 54	
Travel to return precept, $3; extra incidental charges, $35	38 00	
To cost and charges paid Collector Hook for transportation of goods from Warren and Newcastle and Portland, being a distance of eighty miles; also, for storage, and guarding goods, labor, preparing invoice, printing catalogues, &c., for sale, as per his account	952 54	
		$3,113 66
		62,829 86

Amounting to three thousand one hundred and thirteen dollars and sixty-six cents, which deducted from gross amount of sales, leaves a balance of sixty-two thousand eight hundred and twenty-nine dollars and eighty-six cents, which balance I have paid over to Josiah Hook, esq., collector, as per his receipt below, to be disposed of according to law.

HY. THORNTON,
Marshal of Maine.

JANUARY 14, 1815.

PORTLAND, *January* 14, 1815.

Received of Henry Thornton, marshal of Maine, the sum of sixty-two thousand eight hundred and twenty-nine dollars and eighty-six cents, being the above balance of $62,829 86, to be disposed of according to law, and have signed duplicates. I have also received twelve hundred dollars, made up in court bill of costs, and nine hundred and fifty-two dollars and fifty-four cents, costs of transporting goods from Warren and Newcastle, and other costs and charges, as per my account, and received twenty-four dollars commissioner's fees.

JOSIAH HOOK, *Collector.*

UNITED STATES, MAINE DISTRICT, *ss.*

DISTRICT CLERK'S OFFICE, *August* 17, 1837.

In testimony that the foregoing is truly copied from the original on file in this office, I have hereto set my hand and affixed the seal of the district court, the day and year above written.

JOHN MUSSEY,
Clerk U. S. Courts.

No. 15.

DISTRICT OF MAINE, *ss.*

The President of the United States of America to the Marshal of our District of Maine, or his deputy, greeting:

Whereas, by the sentence of our judge of our district court, begun and holden at Wiscasset, within and for our district of Maine, on the last Tuesday of February, 1815, a decree of condemnation was obtained by the United States against three trunks of goods marked /X\ and numbered 378, 379, and 380, (part of the cargo of the sloop Mary, condemned at the last December term of our said court,) seized by the collector of Penobscot, and libelled as enemy's property, and decreed forfeited to said United States—one moiety to their use and the other moiety to the said collector, as to us appears of record, whereof execution remains to be done:

We command you, therefore, that you cause the said three trunks, with their contents, to be sold at public auction, to the highest bidder, at Portland, within our said district, after first giving public notice of the time and place of such sale, as our law directs. And the moneys arising from said sale, after deducting fifty-three dollars and fifty-eight cents, the costs of prosecution, and one dollar for this precept, together with your own proper fees and charges, you will dispose of as follows, viz: one moiety to be paid into the treasury of the United States, and the other moiety to the collector of the district of Penobscot, for the uses prescribed by our law in such cases made and provided; and make return of this writ, with your doings herein, into our said court, to be holden at Portland the last Tuesday of May next.

Witness David Sewall, esq., at Portland, the tenth day of March, in the year of our Lord one thousand eight hundred and fifteen.

H. SEWALL, *Clerk.*

[L. S.]

MAINE, *ss.*

Pursuant to this warrant, I advertised the time and place of sale of the within named trunks of goods in a public newspaper printed in Portland, according to law, and on the 12th instant sold the same at public auction to the highest bidder, according to an account hereto annexed, and the amount of which sales was..... $2,225 33

Costs of court.....	$54 58	
Advertising.....	5 00	
Service.....	2 00	
Commission.....	34 06	
Extra charges and pay for auction room and labor, including precept.....	5 00	
		100 64
		2,124 69

Which sum of twenty-one hundred and twenty-four dollars sixty-nine cents I have paid to Collector Hook, as per his receipt below.

HY. THORNTON, *Marshal.*

APRIL 15, 1815.

APRIL 15, 1815.

Received of H. Thornton, marshal of Maine, twenty-one hundred and twenty-four dollars sixty-nine cents, in full for the net amount of the sales arising from the within named goods, to be disposed of according to law; also, received twenty-eight dollars on the within bill of costs, as storage and for depositions.

JOSIAH HOOK, *Collector.*

UNITED STATES, MAINE DISTRICT, *ss.*

DISTRICT CLERK'S OFFICE,
August 17, 1837.

In testimony that the foregoing is truly copied from the original on file in this office, I have hereto set my hand and affixed the [L. S.] seal of the district court, the day and year above written.

JOHN MUSSEY,
Clerk United States Courts.

No. 16.

TREASURY DEPARTMENT,
Register's Office, February 7, 1838.

I do hereby certify that Josiah Hook, late collector of Penobscot, has accounted for the forfeiture in the case of the sloop Mary and cargo, and that the United States' proportion of said forfeiture amounted to thirty-two thousand one hundred and eighty-eight dollars and thirty-two cents, as appears from his accounts for the first quarter of the year 1815, filed in this office.

T. L. SMITH, *Register.*

IN THE HOUSE OF REPRESENTATIVES, *February* 25, 1845.

Mr. RAMSEY, from the Committee of Claims, made the following report:

The Committee of Claims, to whom was referred the petition of Mrs. Frances Swann and others, report:

That the claim appears to be unsupported by any testimony of a nature to constitute a legal demand upon the treasury. If the claim *had been fully* proved—which is, in a word, that the British had de-

stroyed (in the last war) five hogsheads of tobacco belonging to the petitioner—its payment would be at war with the provisions of the acts of 1816 and 1825, and with the precedents established at various times by Congress. Congress has steadily refused to enlarge the provisions of those acts, so as to take in claims for indemnity *for destruction of personal property by a public enemy*. The petition is appended hereto, as is also the letter of the Third Auditor, dated January 1, 1845, as they state the case fully, and establish the identity of the principles governing this case with those involved in the case of Charles J. Catlett. The tobacco of both was stored in the same warehouses. and was lost or destroyed at the same time.

On the 2d of July, 1836, a law was passed authorizing the accounting officers of the treasury to adjust and settle the claim of Charles J. Catlett upon the principles of the acts of Congress of the 9th of April, 1816, and 3d of March, 1817. Under this law, the Third Auditor of the Treasury examined the claim of Mr. Catlett, and on the 30th December, 1836, made an elaborate and able report to the Second Comptroller of the Treasury, in which, in the opinion of this committee, he clearly demonstrated that the claim, in no material point, came within the principles of the acts of 1816 and 1817. This report was examined by the Comptroller in January, 1837, and concurred in by him. The report and the concurrence are annexed hereto.

Mr. Catlett, anxious to obtain a compensation for his tobacco, and not satisfied with the decision of the Treasury Department, continued to agitate the subject; and the Senate accordingly directed all of his papers and the treasury decision to be laid before it. This was done on the 29th of January, 1839, and they were referred to the Committee of Claims; but in a few days thereafter, so clearly is it to be perceived that the case cannot be brought within the principles of the acts of 1816 and 1817, on motion of the chairman of that committee, it was ordered that the Committee of Claims be discharged from the further consideration of the petition of Charles J. Catlett.

Notwithstanding these decisions of the accounting officers of the treasury, and of the Senate of the United States, some years after, viz: towards the close of the year 1841, the President (Mr. Tyler) ordered a statement of the value of the tobacco to be made out and reported to him. This was done by the Third Auditor on the 20th September, 1841. The order of the President; the reply of the Auditor; the partial allowance of the claim by the President himself, September 21, 1841; the order of the President to the accounting officers of the treasury of the 23d September, 1841, to re-examine the claim of Mr. Catlett, and if they could not allow it, to report specially to him their reasons for disallowance; the reply of the Third Auditor to the President, directed to the Comptroller, against the claim, under date of the 28th September, 1841; and, the final *allowance* of the claim of Mr. Catlett by the accounting officers on the 29th September, 1841, (notwithstanding their conviction of its illegality,) upon the opinion of the Attorney General, given "by direction of the President of the United States," are added to and made a part of this report; together *with an abstract of the* laws of 1816 and of 1817,

showing the utter illegality of the allowance upon the principles imbodied in said laws.

Your committee have dwelt upon this case of Catlett, because it is entirely similar to the one presented by the petitioner, and has been relied on in support of the claim under consideration; and the committee freely admit, that if Charles J. Catlett had a valid claim upon the treasury for remuneration for his losses, so has Frances Swann. Of this there can be no reasonable doubt; for the proof of loss is as good, and the loss was sustained at the same times and places, as in the case of Catlett. To allow one, therefore, and disallow the other, would be inexcusable partiality, unless the payment of the first can be shown to have been improper, impolitic, or unjust.

The committee are fully of the opinion, that a careful perusal of the documents which they have arranged, and submit herewith, will carry conviction to a large majority of the minds that will investigate them, of the inability of Catlett, or of Swann, to bring their claims within the principles established by the acts of 1816 and of 1817; the interference of the President, reversing the decision of the accounting officers of the treasury, supported by naked authority, and by no reasoning, nor by any precedents, is not entitled to weigh against the plain facts and logical arguments so distinctly set forth by the Third Auditor of the Treasury, in the bold and courageous discharge of his duty.

In the importance of the principle involved—going, indeed, to throw open the door to the payment of the innumerable claims for losses of personal property by a foreign enemy—a door that was carefully closed in 1816, when thousands of distressed claimants (now in their tombs) were besieging the Capitol; in the importance of the present claim; and in the high importance of sustaining accounting officers who have at once the honesty and the courage to do their duty when they have direct reason to know that the allowance of an account by them deemed inadmissible would be agreeable to the executive, will be found, the committee venture to hope, a satisfactory reason for the submission of a report so extensive as it will be found to be.

The committee offer the following resolution, and recommend its adoption by the House:

Resolved, That the petitioner is not entitled to relief.

No. 1.

To the honorable the Senate and House of Representatives in Congress assembled:

Frances Swann, a citizen of the District of Columbia, and widow and administratrix of the late William T. Swann, and the heirs of the late William T. Swann, respectfully submit their following memorial and petition.

During the late war between the United States and Great Britain, the late William T. Swann lost five hogsheads of tobacco, in consequence of the military operations of the period, and under circumstances entitling him to indemnification from the public.

The tobacco belonging to the late William T. Swann, amounting to five hogsheads, was partly destroyed and partly taken away by the enemy, at various public warehouses on the Patuxent river, in consequence of the military occupation of said warehouses by the troops of the United States, and other events of the war; a part of said tobacco being at Magruder's warehouse, and the other part at Nottingham warehouse, on the Patuxent river, in the State of Maryland, at the time it was thus taken away and destroyed.

In support of this statement your petitioners refer your honorable bodies to a certain parcel of tobacco notes, proving, under the laws of Maryland, the loss of tobacco by the late William T. Swann to the amount as stated by the said notes; to all the papers, affidavits, depositions, letters, statements, &c., in the case of Charles J. Catlett, which was an application similar to this, made to your honorable bodies in the year 1836, and for the loss of tobacco at the same warehouses on the Patuxent river, at the same time, and under similar circumstances.

And your petitioners pray that, as the case of Charles J. Catlett is in all respects the same with this, the said papers, affidavits, depositions, letters, statements, &c., be adopted as proofs in this case, in addition to the evidence that is, and will be, adduced by your petitioners.

The tobacco herein referred to by your petitioners cost the late W. T. Swann a considerable sum of money, and, after the war, tobacco greatly increased in value; and they therefore respectfully suggest that, in fixing the compensation Congress may be pleased to award to them as aforesaid, the subsequent value be adopted as the rule for ascertaining the amount of their loss; and they beg leave respectfully to refer your honorable bodies to the proofs in Catlett's case, as to the price of tobacco at that time.

Your petitioners respectfully pray that your honorable bodies will grant your petitioners such compensation as to your honorable bodies may seem just and right, and as is suggested by the laws in such cases made and provided.

FRANCES SWANN, *and others.*

No. 2.

TREASURY DEPARTMENT,
Third Auditor's Office, January 1, 1845.

SIR: I have the honor to acknowledge the receipt of your letter of the 31st ultimo, enclosing the petition of Mrs. Frances Swann, widow and administratrix of the late William T. Swann, deceased, and the heirs of the deceased, with a *note from* her to you—the object of these

papers appearing to be to obtain payment for five hogsheads of tobacco expressed to have been partly destroyed, and partly taken away by the enemy, from Magruder's warehouse and Nottingham warehouse, on the Patuxent river, in consequence of the military occupation of those warehouses by the troops of the United States, and other events of the war; and to have, in order thereto, the proofs in the case of Mr. Charles J. Catlett before the committee. Your letter expresses it to be the desire of the committee to obtain the papers alluded to in the petition, and all the information within my power calculated to shed light upon the merits or demerits of the claim. No claim in respect of the tobacco in question appears to have been ever presented for allowance at this office. For Mr. Catlett's relief a special law was passed; and the material papers in his case, and wherein a full description of the testimony in its support appears, will be found to have been printed with the reports of the Committee on Public Expenditures of the House of Representatives, made on the 2d and 3d sessions of the 27th Congress, and numbered 1,103 and 211. If the committee shall, notwithstanding, desire to see all the papers themselves, the same shall be sent to you, on your signifying such a desire.

Not a word appears in any of them as to any tobacco described as belonging to Mr. Swann.

The petition and note sent by you are herewith returned.

With great respect, your most obedient servant,

PETER HAGNER, *Auditor.*

Hon. JOSEPH VANCE,
Chairman Committee of Claims, House of Reps.

No. 3.

Report of the Third Auditor on the claim under the act for the relief of Charles J. Catlett.

TREASURY DEPARTMENT,
Third Auditor's Office, December 30, 1836.

The claim he has preferred is as follows:

To loss of tobacco by British spoliation during the last war, and for which Congress has ordered restitution, viz.

149 hogsheads at Nottingham;
115 do. at Magruder's;
4 do. at Cedar Point;

Total 268 hogsheads tobacco, at $96 90⅔—25,970 27.

To interest from 17th November, 1815, at which time, and at the above rate per hogshead, he sold the remnant and refuse of his tobacco to Phineas Janney, of Alexandria.

At the 2d session of the 23d Congress (January 13, 1835) a bill for

his relief appears to have been reported from the Committee on Finance of the Senate, accompanied by a report, which was ordered to be printed. After mentioning therein that his losses appeared to have been very severe, by reason of the military operations of the enemy during the late war with Great Britain, and that he had large quantities of flour and tobacco in store at Alexandria, and considerable quantities of tobacco in the Maryland warehouses situated at various points on the waters making into the Chesapeake bay, all of which were burnt, captured, or destroyed by the enemy, the committee proceeded to observe that, in regard to the chief bulk of his losses, it could perceive no safe principle upon which it could rest in recommending an allowance; that the utmost extent to which the government can with safety go, in remunerating losses to individuals who have been subjected to injury by the fortunes of war, is to protect them *against its own act and its consequences*. Thus, if a house be occupied by the troops of the country for military operations, it thereby is placed on the footing of any other military position, and may be justifiably destroyed by the enemy; so, if private property is used to assist in the defence of the country, or in the prosecution of offensive military operations, it becomes as liable to be destroyed by the enemy as any part of the *materiel* of the army; and, if destroyed, the government is fairly answerable for its value. That, keeping this principle in view, the committee could find no sufficient authority to recommend the payment of by far the largest portion of the claim set up by the petitioner, but that there were portions of the claim which the committee consider as falling under the principle thus laid down. That the petitioner had in store at Magruder's warehouse, on the Patuxent river, 115 hogsheads of tobacco, which, along with the warehouse, appear to have been burnt by the British in June, 1814; that he had also a small number of hogsheads in store at Cedar point warehouse, which were destroyed in the same way; that the proof was satisfactory to show that very smart conflicts between detachments of the enemy and Maryland troops occurred at both places; and that at Nottingham warehouse, seven miles distant from Magruder's, where the petitioner had in store 149 hogsheads of tobacco, a breastwork was made of the tobacco for the defence of the American troops; that, while at Magruder's and Cedar point, the American troops found shelter under the warehouses, and from therein continued to fire on the enemy until their ammunition was expended. That it was also in proof that other warehouses, equally exposed, were left unburnt, in consequence, as was believed, of the absence of all military operations in their immediate neighborhood by the troops of the United States; that the destruction of the warehouses at Magruder's and Cedar point, with their contents, and the abduction of the tobacco from Nottingham, seemed fairly to be traceable to the principle laid down by the committee, and to that extent it reported a bill for his relief; that the committee had not been able to satisfy themselves as to the proper price which should be allowed for the tobacco thus destroyed and carried off; that, at the time of the destruction, the prices for tobacco were merely nominal, but, after the restoration of peace, the price became high; *that it was fairly* to be inferred that the

petitioner would have continued to hold it until the peace—say one year more—he being at the time a merchant of wealth and respectability, and, like others in the country, indulging in speculation in an article which time improved in quality, flavor, and price; and that, under all the circumstances, it had been deemed most advisable to submit the subject to an equitable decision on the part of the accounting officers, when the intentions of the petitioner could be better inquired into, and a more satisfactory result attained. The bill to which the report refers, authorized and directed the proper accounting officers of the Treasury Department to settle *and allow, upon just and equitable principles*, the claim of Charles J. Catlett, for tobacco which belonged to him at Magruder's warehouse, Cedar point warehouse, and Nottingham warehouse, all in the State of Maryland, and was lost, captured, or destroyed by the British or American troops, during the last war between the United States and Great Britain; and prescribed that the allowance should be carried to the credit of the said Charles J. Catlett on the books of the treasury.

On the 19th February, 1835, the bill appears to have been rejected, and on the following day a reconsideration of the vote was moved, and the motion laid on the table. No further action on it appears to have been had during the session.

At the last session of Congress, another bill for the relief of Charles J. Catlett, in precisely the same form as the one before noticed, was reported from the Committee of Finance of the Senate, unaccompanied by any report in relation to it. This bill appears to have been read a second time, and considered as in Committee of the Whole, on the 29th March, 1836, and to have been then, on motion, ordered to lie on the table, where it rested till the 24th June following, when the consideration of it as in Committee of the Whole is shown to have been resumed, and when it was amended, reported to the Senate, and the amendment concurred in, and in the amended form it afterwards became a law. The amendment consisted in substituting for the words "and allow upon just and equitable principles," these: "*upon the principles of the acts of Congress of the 9th of April*, 1816, *and 3d March*, 1817." In acting on the claim, therefore, the accounting officers will have to be governed, not by the views of the committee on the principles laid down in their report, but by the principles of the acts referred to. So far as respects the first of those acts, the principles in question are contained in the 9th section thereof, and which provided that any person who, in the late war between the United States and Great Britain, sustained damage by the destruction of his or her house or building by the enemy, while the same was occupied as a military deposite under the authority of an officer or agent of the United States, should be allowed and paid the amount of such damage, provided it should appear that such occupation was the cause of the destruction. And the act of the 3d March, 1817, provided that the aforesaid 9th section should be construed to extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposite for military or naval stores, or as barracks for the military forces of the United States.

Part of the testimony adduced in support of the claim consists of two letters, dated 28th August, 1828, and 27th February, 1832, addressed to the claimant by George W. Biscoe, who appears to have been in service as a major of militia of the State of Maryland. The first of these letters is verified on oath, and in it the writer has thus expressed himself: "At your request for information in relation to the tobacco, your property, taken from the warehouses at Nottingham by the British, during the period of their invasion, I have to state that a part of your tobacco was used by my order, as commanding officer at Nottingham, for the purpose of erecting a breastwork for the defence of the place; and, with the exception of three or four hogsheads, I am confident, out of the sale I made to you of 105 hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a part of the tobacco thus used was sold by him to you." The other letter contains a statement, which the writer represents to be made on honor, as a brigade commander of the militia of Maryland, and an officer holding a commission of surveyor and inspector of the revenue under the general government, and to be such as he can verify on oath, if necessary. This statement is as follows: "You request information on the subject of the defence of Magruder's warehouses, in June, 1814, by a detachment of militia acting under my orders. In reply, I have to state that the captain in command reported to me his rencounter with the enemy at that place. He stated that, on the near approach of the British barges (said to be) under the command of Commodore Barney and Colonel Malcomb, of marines, he posted his men behind the warehouses, situated within thirty yards of the shore; and that so soon as his fire of musketry could be deemed effectual, he commenced, and continued to do so for an hour or two, being under cover of the warehouses; finally his ammunition became expended, and he was compelled to retire. The enemy then landed and set fire to the warehouses, which were burnt. I am aware that you sustained considerable loss in tobacco there and elsewhere on the Patuxent river, from the circumstance of your having purchased of me more than one hundred hogsheads, which, with the exception of a few (say, to the best of my recollection, four or five) at the warehouses here, were either burnt at Magruder's warehouses at the period above stated, or were carried away by the enemy, on their retreat from the city of Washington to their shipping at this place. At one period I used the tobacco in the warehouses here for military purposes, a part of which I recollect was your property, having sold it to you."

This letter is denoted to have been written at Nottingham. Another portion of the evidence adduced is contained in depositions of Jesse Selby and James Baden, dated December 20, 1833, and February 20, 1835; the former of whom has testified that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia commanded by Captain Joshua Naylor; and that the said warehouse, he verily believed, was burnt in consequence of the said company being there, and the said warehouse affording protection, and being occupied by them; also, that Captain Naylor died in *the year 1825. And* Mr. Baden has testified that

General G. W. Biscoe, commanding the Maryland militia on the 17th June 1814, (then Major Biscoe,) ordered the tobacco to be rolled out of the warehouses in Nottingham, a large breastwork to be made of the tobacco, and the cannon to be planted behind it; that the militia then fired on the British, who manned eleven barges, commanded by Commodore Barry, who, at the time, retreated; that the British, some time after, took the most of the tobacco from that warehouse, and kept possession of the waters of the Patuxent river, as high as Nottingham, until they burnt the Capitol; that Captain Naylor's company of Maryland militia was stationed behind Magruder's warehouse, and, as soon as the British barges came within gunshot, commenced firing upon them, and continued until the ammunition was expended; that they then retreated, and the enemy immediately landed, set fire to the warehouse, and burnt all the tobacco within it; that this was on the 17th June, 1814, the day the militia prevented them from coming to Nottingham, which, probably, prevented that warehouse from sharing the same fate; that the witness was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham; that Charles J. Catlett was a large owner of tobacco and a very heavy sufferer; that the witness was appointed inspector in January, 1813, at Magruder's warehouse; and that, previous to his appointment, James Naylor was the inspector. In these papers no testimony can be perceived by the Third Auditor which will serve to bring the claim within the principles of the acts of 1816 and 1817, before noticed. Of the use of the warehouse at Nottingham for any military purpose there is no proof whatever, nor yet of its having ever been destroyed by the enemy; and that the taking of the tobacco therefrom by the enemy was not at the time at which the same was rolled out and used as a breastwork by the American troops, nor till months thereafter, is evident—the latter transaction appearing, by Mr. Baden's deposition, to have been on the 17th June, 1814, and the former appearing, by Major Biscoe's last letter, to have been on the retreat of the enemy from the city of Washington; wherefrom, according to historical evidence, they retired on the night of the 25th August, 1814. And had the taking of the tobacco by the enemy been while it was in the use of the American troops, and because thereof, the testimony affords no means of determining the quantity used in the breastwork, nor what portion of that belonged to the claimant.

As to Magruder's warehouse, it is not pretended to have ever been occupied as a place of deposite for military or naval stores, or as barracks for the military forces of the United States, either by or without an order of an officer or agent of the United States; and a like remark is applicable to the warehouse at Cedar Point, the testimony in relation to which is contained in letters of the Hon. B. J. Semmes and the Hon. D. Jenifer to the Committee of Claims, each dated February 27, 1832. The latter gentleman represents that some schooners of the enemy were anchored off the warehouse; that some of the crews landed, and were in the act of taking away some of the tobacco, when General Stuart, the commander of the troops in the vicinity, ordered them down, and commenced an attack with artillery upon the *enemy at the* warehouse; that, after firing several shots from cannon,

&c., the warehouse was set fire to by the enemy, and burned to the ground, with all the tobacco then in the house; that, had the attack not been made by the American troops, the house, it is believed, would not have been fired, as above and below, on the Potomac, tobacco warehouses were visited by the enemy and not destroyed; and that, being at the time acting as an aid to the general, the writer was present and saw the attack and burning of the tobacco warehouse. From this testimony of an eyewitness, it is obvious that the destruction of the warehouse was not caused by any occupation of it by the American troops, or even of their having been stationed against it and using it as a protection, but in consequence of their having been ordered down, and attacked the enemy when in possession of it, and in the act of carrying off tobacco therefrom. It shows, too, that the enemy, in taking away tobacco, were not governed by the circumstance of the building in which it was placed having been used, or not, for a military purpose. Had not the claim appeared to the Third Auditor to be such as can in no point be brought within the principles of the acts of 1816 and 1817, he would, as to the quantities of the tobacco taken or destroyed by the enemy belonging to the claimant, and the rates to be allowed for the same, have required additional testimony, of a kind different from that afforded by the tobacco notes, &c., produced. The present possession of such notes is not considered as any certain evidence that the tobacco they relate to belonged to the claimant when the warehouses therein mentioned were destroyed or ravaged by the enemy, nor, indeed, that the same was then in those warehouses. To prove that the several hogsheads which the notes relate to were then in the warehouses, evidence on oath, drawn from the books of the inspector at each, would have been deemed necessary; and to prove the fact of their having belonged to the claimant, and the rates which might have been allowable for them, verified extracts from the account books of the claimant, showing the dates of purchase, and the prices paid for them, would have been requisite. It is observed that, as respects the charge for one hundred and forty-nine hogsheads at Nottingham, the vouchers relating to *fifty-one* consists not of notes for the receipt thereof into the warehouse, but of manifests for the delivery of the same out of it; and that the vouchers as to *two* of the hogsheads at Magruder's are of the same description. In case the claim had been admissible, on the principles of the acts of 1816 and 1817, the value of the tobacco at the time it was taken or destroyed would, in conformity with the rules which governed in the settlement of claims under those acts, have had to be taken as the guide for fixing the rates of allowance; and to arrive at such value, the cost prices before the peace, and not the greatly enhanced prices obtainable thereafter, would serve as the most fit criterion. As, however, the claim is considered by the Third Auditor to be in no point allowable by the accounting officers, on the principles of the before mentioned acts of 9th April, 1816, and the 3d of March, 1817, according to which they are directed to settle it, he, without asking for any further testimony, refers the case to the Second Comptroller for his decision thereon.

PETER HAGNER, *Auditor*.

ALBION K. PARRIS, *Esq.*,
Second Comptroller

No. 4.

TREASURY DEPARTMENT,
Second Comptroller's Office, January, 1837.

I concur with the Third Auditor in regard to the claim mentioned in the foregoing report.

ALBION K. PARRIS, *Comptroller.*

Endorsed: "(Copy.) Decision of the accounting officers, December 30, 1836."

No. 5.

Order of the President.

Let Mr. Catlett procure a statement of the amount of his debt to the government. Let him have a conjectural statement made of the value of the tobacco: first, at the war price; second, at the peace price; and let these be reported to me.

J. TYLER.

Mr. Hagner will make the statement as early as possible.

Endorsed: "Instructions of the President of the United States, September, 1841."

No. 6.

TREASURY DEPARTMENT,
Third Auditor's Office, September 20, 1841.

SIR: In obedience to your instructions in the case of Charles J. Catlett, which require the procuring by him of a statement of the amount of his debt to the government; the making a conjectural statement of the value of the tobacco: first, at the war price; second, at the peace price; and the reporting these to you by this office, I have the honor to report that, by certificates of the Register of the Treasury and Fourth Auditor, Mr. Catlett appears to stand indebted—

On the books of the former, in the sum of.....	$5,633 93
On the books of the latter, in the sum of.....	3,228 06
	8,861 99

To show the war price, Mr. Catlett has procured certificates from John Kurtz, esq., and General Walter Smith—the former expressing that, on reference to the books of Bowie & Kurtz, who were large purchasers of Maryland tobacco, he found that the best crops of Patuxent growth were worth about $50 per hogshead, average; and

General Smith declaring that he would rate the best crops of Maryland tobacco, during the late war with Great Britain, at about $60 per hogshead; adding, that the above estimated value of the crops of the best Maryland tobacco is to be understood as including firsts and seconds of the same crops, and that the purchases made by Mr. Catlett on the Patuxent had always been understood by him to be among the best crops in that vicinity.

Relative to the peace price, a sale appears to have been effected by Mr. Catlett to P. Janney, esq., in November, 1815, of five hogsheads, (two of firsts and three of seconds,) and which he represents to have been refuse,) at $96 90⅞ on an average, the rate charged in the claim heretofore preferred by him, and at which, although urging it to be too low, he is understood to be disposed to have it, for the present purpose, now rated.

Taking the quantity of tobacco, as charged in the claim of Mr. Catlett, at 268 hogsheads, (the war price,) assuming the average between $50 and $60 per hogshead, (the rates specified in the certificates of Mr. Kurtz and General Smith, say $55,) would amount to $14,740; and the peace price, at the rate Mr. Catlett heretofore charged, as aforesaid, would amount to $25,970 27.

As regards the actual quantity of tobacco, the property of Mr. Catlett, taken or destroyed by the enemy in the warehouses, no further evidence, it is observed, has been adduced to remedy the defects pointed out in the latter part of the Third Auditor's report on the case, dated 30th September, 1836, a copy whereof is amongst the papers, and to which I respectfully refer.

Apprehensive that you may not be informed of the facts about to be mentioned, I deem it incumbent on me to add that, in pursuance of a resolution of the Senate, passed on the 29th January, 1839, *all the papers in the case, and a copy of the report of the Third Auditor*, before mentioned, *were transmitted to the Senate*, and referred to the Committee of Claims; and that in a few days thereafter, on motion of the chairman of that committee, it was "ordered that the Committee of Claims be discharged from the further consideration of the petition of Charles J. Catlett, and that the petitioner have leave to withdraw his petition and papers."

With the highest respect, your most obedient servant,

J. THOMPSON, *Acting Auditor.*

The PRESIDENT OF THE UNITED STATES.

Endorsed: "Report of the acting Third Auditor to the President, September 20, 1841."

No. 7.

SEPTEMBER 23, 1841.

The President has examined the claim of Charles J. Catlett, under the special act passed for his relief, and believing it to be a meritorious claim, directs *the accounting officers* to re-examine the case, and,

if they cannot admit the claim, to report the case specially to him, with their reasons for their disallowance. It is desirable that their action should be had as soon as practicable.

Endorsed: "Additional instructions of the President of the United States, 23d September, 1841."

No. 8.

Additional report of the Third Auditor on the claim of Charles J. Catlett, under the act of Congress for his relief, approved 2d July, 1836, *made in pursuance of instructions from the President of the United States, dated 23d September,* 1841, *directing the accounting officers to re-examine the case, and if they cannot admit the claim, to report the case specially to him, with their reasons for their disallowance.*

TREASURY DEPARTMENT,
Third Auditor's Office, September 28, 1841.

Reference is made, in the first instance, to the report of the Third Auditor, dated 30th December, 1836, and concurred in by the Second Comptroller, wherein they have decided that no part of the claim is allowable by them, "upon the principles of the acts of Congress of the 9th April, 1816, and the 3d March, 1817," agreeably to which they were, by the aforesaid acts for Mr. Catlett's relief, directed to settle it, and wherein reasons are assigned for that decision.

Mr. Catlett had, before presenting to the Senate the petition giving rise to the act for his relief, sought (so far as regards his tobacco at Nottingham) redress by petition presented to the House of Representatives; and to the report of the Committee of Claims thereon, concluding with a resolution for its rejection, printed in the 3d volume of Reports of Committees House of Representatives, 1st session 22d Congress, No. 413, reference is also made. The papers had been referred by the committee to this office for information; and of the Third Auditor's reply, noticed in the report, a copy is placed herewith. The subsequent petition appears to be much more comprehensive in its scope, and to have been, on its presentation to the Senate, referred to the Committee on Finance, by whom, on the 13th of May, 1834, a report was made, accompanied by a bill, on which there appears to have been no final action at that session. At the succeeding session the committee presented a like report, accompanied by a bill directing the settlement of the claim "upon just and equitable principles;" and in this form the bill was rejected.

A reconsideration of the vote was moved, but without any further proceedings at that session of Congress. Another bill in the same form was reported on the 27th January, 1836, and was read a second time, and considered as in Committee of the Whole, on the 29th of March, when it was ordered "that it lie on the table." The consideration of it was resumed on the 24th of June, 1836; and having been then amended by striking out the words "*and allow upon just*

and equitable principles," and substituting the words "*upon the principles of the acts of Congress of the 9th April*, 1816, *and the 3d March*, 1817," it became the law enacted for Mr. Catlett's relief. The acts of 1816 and 1817 had to be executed by a commissioner, and who, by the 12th section of the former of those acts, was required to establish, under the direction, or with the assent, of the President of the United States, such rules as are therein pointed out; and for the rules so established, and various others prescribed by the President for the government of the commissioner, and wherein the President's constructions of sundry provisions of the laws appear, reference is made to the 3d volume of State Papers, 1st session 16th Congress, No. 41, H. R.

The duties of the commissioner commenced on the 1st July, 1816, and terminated on the 9th April, 1818; soon after which, the business then in his office, and not finally acted on by him, was, with his records and files, transferred by law to this office. On the 1st November, 1816, only four months after the commissioner entered on his office, he was prevented by the President from making any decisions under the 9th section of the law of April, 1816, being the sec ion which made provision for the payment for damages by the destruction of buildings by the enemy while the same were occupied as a military deposite, under the authority of an officer or agent of the United States; and, thereafter, no award was ever made by the commissioner under that section. At the following session of Congress, the President, in a message thereto, assigned as the reason for his suspending proceedings relative to the claims under the section in question, its "having received a construction giving it a scope of great and uncertain extent." The message, and the report of the committee to whom it was referred, are printed in the 1st volume of State Papers, 2d session 14th Congress, and numbered 10 and 11. The committee, in that report, have declared a decided opinion, from a conversation with the commissioner generally upon the provisions of the act, "that he had given, and was still disposed to give, to the law an extension of construction not contemplated by Congress at the time of its passage, and not warranted by its object."

An explanatory report of the commissioner may also be seen in the same volume, numbered 15. As regards claims under the 9th section of the amendatory act of the 3d March, 1817, referred to in the act for Mr. Catlett's relief, limiting the duty of the commissioner to the carefully examining and investigating the same, and reporting the facts in such [each] case to Congress, that such provision might be made for the relief of the respective claimants as should be deemed just and proper. In conformity therewith, reports of the facts in numerous cases under the aforesaid ninth section were, from time to time, reported to Congress by the commissioner, prior to the 9th April, 1818; but no provision for the relief of the claimants was enacted till the 3d March, 1825, when a law was passed providing that any person having a claim for a building destroyed by the enemy during the late war, under the act of the 9th April, 1816, and the amendatory act of 3d March, 1817, which had been presented *to the commissioner before* the 10th April, 1818, and

not paid under said acts, nor finally rejected by him, might, within nine months thereafter, present the same, with the evidence to support it, to the Third Auditor, for examination and adjustment; and directing him, if he should be satisfied that the building or buildings for which damages were claimed "was, at the time of its destruction, occupied by order of any agent or officer of the United States as a place of deposit for military or naval stores, or as a barracks for the military forces of the United States," to proceed to assess the damages and certify the amount for payment in the way therein mentioned. A report of the Third Auditor's proceedings under the law of 1825 was made to the Senate in January, 1827, and forms Senate document No. 36, second session nineteenth Congress. That law authorizing payment for buildings only, no allowance for personal property destroyed therein was made in any case. The claims for personal property so destroyed amounted, as the report shows, to nearly $300,000, and not a dollar thereof has ever been paid by the United States—all the subsequent applications to Congress for indemnification, as to many of these cases, having failed. For the relief of owners of buildings destroyed by the enemy while occupied as places of deposit for military stores, or as barracks for the troops, by order of officers of the United States, sundry special acts have been since passed, but without authorizing, in a single instance, it is believed, any payment for personal property destroyed in, or taken away from, such buildings.

At the first session of the twenty-second Congress the Committee of Claims of the House of Representatives appear to have been instructed, by a resolution, to inquire into the expediency of making further provision for extending and more effectually carrying into effect the provisions of the act of the 9th April, 1816, before mentioned; and on the 16th March, 1832, the committee made a report, (printed and numbered 386,) concluding with a resolution as follows: "*Resolved*, That it is inexpedient to legislate on the matters contained in the resolution."

The committee appended thereto a very elaborate report, made on 5th April, 1824, by a select committee appointed to inquire what further legislative provisions were fit and necessary to carry into effect the provisions of the aforesaid act of the 3d March, 1817, amendatory of that of the 9th April, 1816. The latter report was accompanied by a bill, and which, by renewal at the succeeding session of Congress, became, it is believed, after modification, the law of the 3d March, 1825, before noticed. This general view of the course pursued in relation to cases arising under the ninth section of the law of the 9th April, 1816, by President Madison and by Congress, has been presented because it is deemed to manifest the design to have been at all times that the aforesaid ninth section should be construed strictly; and a knowledge of this course had due influence in the action of this officer on the claim in December, 1836; and the course pursued in Congress, with reference to the particular case of Mr. Catlett, has been here again noticed, because it is considered to evince an intention that he should receive no relief, unless he could bring his claim *within the principles* of the aforesaid laws of 1816 and 1817.

The papers in the case appear to have been recently laid before the late Attorney General, and by whom an opinion has been given, as follows:

"I am satisfied that Mr. Catlett is entitled to relief, under the special act passed for his benefit; but I have not as yet been able to bring my mind to a satisfactory conclusion as to the proper measure of compensation to be applied, namely, whether it should be the war price or the peace price that ought to be allowed.

"J. J. CRITTENDEN."

The opinion, it is observed, does not express that Mr. Catlett is entitled to relief under the special act, *upon the principles of the aforesaid laws of* 1816 *and* 1817; and, verbally, Mr. Catlett has signified that the Attorney General threw those laws entirely out of view, and relied on some other ground.

The special act appears to me to confer no power on the accounting officers to settle the claim upon any other principles than those of the laws of 1816 and 1817, to which it refers; nor do I see it declared in the opinion that the *accounting officers* would be justified in settling the claim upon different principles, under the special act, independent of any other authority.

To show that no allowance can be made on the claim, "upon the principles of the acts of Congress of the 9th of April, 1816, and 3d of March, 1817," the claim will be now reviewed, taking the items separately, and the testimony applicable to each; and,

1. As to one hundred and forty-nine hogsheads of tobacco at Nottingham. The earliest letter of General Biscoe to the claimant contains as follows:

"At your request for information in relation to the tobacco (your property) taken from the warehouses at Nottingham by the British during the period of their invasion, I have to state that a part of your tobacco was used by my order, as commanding officer at Nottingham, for the purpose of erecting a breastwork for the defence of the place; and, with the exception of three or four hogsheads, I am confident, out of the sale I made to you of one hundred and five hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a portion of the tobacco thus used was sold by him to you."

The second letter from General Biscoe to the claimant purports to be in answer to a request for information as to the defence of *Magruder's* warehouse, in June, 1814, and, after representations relative thereto, proceeds thus:

"I am aware that you sustained considerable loss in tobacco there, and *elsewhere* on the Patuxent river, from the circumstance of your having purchased of me more than one hundred hogsheads, which, with the exception of a few (say, to the best of my recollection, four or five) at the warehouses *here*, [the letter is expressed to have been written at *Nottingham*,] were either burnt in Magruder's warehouses at the period above stated, or were carried away by the enemy, on their retreat from the city of Washington, to their shipping at this place. *At one period I used the tobacco* in the *warehouses* here for

military purposes; a *part* of which, I recollect, was your property, having sold it to you."

And a deposition of James Baden contains as follows:

"General George W. Biscoe, commanding the Maryland militia, on the 17th day of June, 1814, (then Major Biscoe,) ordered the tobacco to be rolled out of the warehouse in Nottingham, Prince George's county, Maryland, and a large breastwork made of the tobacco—the cannon planted behind it; and then we fired on the British, who manned eleven barges, commanded by Commodore Barry, who at that time retreated. The heads were out of many hogsheads, and the tobacco a good deal torn out. The British, *some time after*, took the most of the tobacco from that warehouse; and they kept possession of the waters of the Patuxent river, as high as Nottingham, from that time until they burnt the Capitol."

There is no proof, nor is it even alleged, that the *warehouse* at Nottingham was ever occupied for any military purpose whatever, nor yet that it was destroyed by the enemy. It must not only have been occupied, by order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States, but have been destroyed by the enemy while in such occupation, and in consequence thereof, to have brought the tobacco in it within the 9th section of the act of the 9th of April, 1816, even as construed by the commissioner.

The part of the aforesaid deposition of James Baden, in which, after mentioning the breastwork, and the cannon planted behind it, he says, "and then we fired on the British, who manned the eleven barges," &c., is not only unsustained by the testimony of General Biscoe, the commanding officer, but seems to be in conflict with another part of Mr. Baden's own testimony, which, as regards Magruder's warehouse, will be hereafter noticed, and in which he represents that warehouse to have been burnt by the enemy, and adds: "this was on the 17th day of June, 1814, as above stated, *which day we prevented them from coming to Nottingham*, which probably prevented that warehouse from sharing the same fate."

Divested of the testimony as to that firing, the case will be devoid of all proof of any conflict at Nottingham, even in June, 1814. It seems obvious from the testimony, that the tobacco then rolled out of the warehouse there, and formed into a breastwork, was only temporarily used, and that the enemy did not carry off the tobacco from the warehouse there till they were on their retreat from Washington, after burning the Capitol, in August. Had the tobacco so used been taken or destroyed while in such use, the testimony as observed in the former report, affords no means for determining the quantity taken for the breastwork, nor how much of what was taken belonged to Mr. Catlett. General Biscoe, in his first letter, alludes to a sale by him of 105 hogsheads to Mr. Catlett; but it appears, by his second letter, that not more than four or five of them were at Nottingham—all the others being represented to have been either burnt in *Magruder's* warehouse in June, or carried away from some other place or places on the Patuxent by the enemy on their retreat in August.

As to 51 of the 149 hogsheads, charged with being in the ware-

house at Nottingham, the vouchers, as mentioned in the former report, consist not of notes for the receipt thereof into the warehouse, but of manifests for the delivery of the same out of it. These vouchers have now been separated from the others, and will be found to show that 35 of the 51 were delivered, in 1812 and 1813, to George Biscoe & Son, and put in their barn; that two others were delivered, in 1813, to George Biscoe, and put in his barn; that four others were delivered in 1811, 1812, and 1813, to Francis Green, William Morton, and Edward Skinner, and put in George Biscoe's barn; that two others were delivered in March, 1814, to William Sasscer, and put in George Biscoe's barn; that six others were delivered, in 1813, to Gerrard Greenfield, and put in the red barn; and that the remaining two were delivered, in 1813, to Walter T. Greenfield, and put in red store. Any military occupation of these barns and store at any time is not proved, or even alleged; nor is there any proof or allegation of the destruction of those buildings by the enemy, or of the carrying off by them of any tobacco therefrom.

2d. As to 115 hogsheads of tobacco at Magruder's.—The statement in relation thereto, in General Biscoe's second letter to the claimant, is as follows: "You request information on the subject of the defence of Magruder's warehouse in June, 1814, by a detachment of militia acting under my orders. In reply, I have to state that the captain in command reported to me his rencounter with the enemy at that place. He stated that, on the near approach of the British barges (said to be) under the command of Commodore Barry and Colonel Malcomb, of marines, he posted his men behind the warehouse, situated within thirty yards of the shore; and that, so soon as his fire of musketry could be deemed effectual, he commenced, and continued to do so for an hour or two, being under cover of the warehouses. Finally his ammunition became expended, and he was compelled to retire. The enemy then landed and set fire to the warehouses, which were burnt." The remaining part of the statement has been previously cited.

Jesse Selby, in a deposition dated December 20, 1833, has testified that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia, commanded by Captain Joshua Naylor; and that the warehouse, he verily believes, was burnt in consequence of the said company being there, and the said warehouse affording protection, and being occupied by them; also, that Captain Naylor died in the year 1825. And, in the aforesaid deposition of James Baden, he has testified that Captain Naylor's company of Maryland militia was stationed behind Magruder's warehouse, and as soon as the British barges came within gunshot, commenced firing upon them, and continued until the ammunition was expended; that they then retreated, and the enemy immediately landed, set fire to the warehouse, and burnt all the tobacco within it; that this was on the 17th June, 1814, the day the militia prevented them from coming to Nottingham, which probably prevented that warehouse from sharing the same fate; that the witness was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham; that *Charles J. Catlett* was a large owner of tobacco,

and a very heavy sufferer; that the witness was appointed inspector in January, 1813, at Magruder's warehouse; and that, previous to his appointment, James Naylor was the inspector.

That the warehouse was, at the time of its destruction, or indeed at any time, occupied by order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the troops, is not pretended; and without such an occupation thereof at the time of destruction, the tobacco destroyed in it could not have been paid for, under the 9th section of the act of 9th April, 1816, even as construed by the commissioner. The tobacco could not have been brought within that section without bringing the building also within it; and the non-presentation of a claim for the destruction of the building may be viewed as a strong manifestation that its owners were satisfied that there had been no such military occupation of it as to entitle them to any remuneration for its destruction under the laws of 1816 and 1817.

3d. As to 4 hogsheads of tobacco at Cedar point.—The testimony in relation to the destruction of the warehouse there, is continued in letter of the Hon. B. J. Semmes and the Hon. D. Jenifer; and with reference to which it may suffice here merely to recite, from the report of this office, the following observations; "From this testimony of an eyewitness, it is obvious that the destruction of the warehouse was not caused by any occupation of it by the American troops, or even of their having been stationed against it, and using it as a protection; but in consequence of their having been ordered down and attacked the enemy when in possession of it, and in the act of carrying off tobacco therefrom. It shows, too, that the enemy, in taking away tobacco, were not governed by the circumstance of the building in which it was placed having been used, or not, for a military purpose."

Unable to perceive that the accounting officers possess any power, under the special act for Mr. Catlett's relief, to settle his claim upon any other principles than those of the laws of the 9th April, 1816, and 3d March, 1817, therein mentioned; or that, upon the principles of those laws, as the same have been at all times construed in acting under them, any portion of the claim can be allowed by the accounting officers, I am constrained by a sense of duty, without making an allowance on it, to again report the case to the Second Comptroller for his decision thereon.

PETER HAGNER, *Auditor*.

ALBION K. PARRIS, Esq.,
Second Comptroller.

No. 9.

TREASURY DEPARTMENT,
Second Comptroller's Office, September 29, 1841.

SIR: The Attorney General having, by direction of the President of the United States, examined the claim of Charles J. Catlett,

under the act for his relief passed July 2, 1836; and having given an opinion that said Catlett is entitled to relief under that act; and having also certified that, in examining the case, and given an opinion, he had reference to the acts of 1816 and 1817, as furnishing the rate of principle for the decision of the case, I think an account should be reported, agreeably to the opinion of the Attorney General; and the papers are accordingly referred back to you, that an account may be accordingly reported.

Respectfully, &c.

ALBION K. PARRIS, *Comptroller.*

PETER HAGNER, Esq.,
Third Auditor.

No. 10.

THE UNITED STATES,

To Charles J. Catlett, DR.

For this sum, allowed under a special act of Congress for his relief, approved July 2, 1836, *in pursuance of an opinion of the late Attorney General, and a decision of the Second Comptroller founded thereon,* for tobacco taken or destroyed by the British during the late war with Great Britain, at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland..... ..... $8,861 99

TREASURY DEPARTMENT,
Third Auditor's Office, September 29, 1841.
Stated by T. GUNTON.

TREASURY DEPARTMENT,
Second Comptroller's Office, September 29, 1841.
Examined by J. SEAVER.

Endorsed: "No. 13280. Account of Charles J Catlett. Act for his relief. $8,861 99. Reported September 29, 1841. Requisition No. 9158, dated September 29, 1841, for five thousand six hundred and thirty-three dollars and ninety-three cents, to be carried to his credit on the books of the Register of the Treasury, ($5,633 93;) requisition No. 9159, dated 29th September, 1841, for three thousand two hundred and twenty-eight dollars and six cents, to be carried to his credit on the books of the Fourth Auditor, ($3,228 06.")

No. 11.

[No. 13280.] TREASURY DEPARTMENT,
Third Auditor's Office, September 29, 1841.

I certify that there is due from the United States to Charles J. Catlett, under a special act of Congress for his relief, approved 2d

July, 1836, and *in pursuance of an opinion of the late Attorney General, and a decision of the Second Comptroller founded thereon*, the sum of eight thousand eight hundred and sixty-one dollars and ninety-nine cents, for tobacco taken or destroyed by the British during the late war with Great Britain, at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland; and for which amount two requisitions will issue in favor of the Treasurer of the United States—one for the sum of five thousand six hundred and thirty-three dollars and ninety-three cents, to be carried to the credit of the said Charles J. Catlett, on the books of the Register of the Treasury; and the other for three thousand two hundred and twenty-eight dollars and six cents, to be carried to his credit on the books of the Fourth Auditor—as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

PETER HAGNER, *Auditor.*

ALBION K. PARRIS, Esq.,
Second Comptroller of the Treasury.

No. 12.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance, this 29th day of September 1841.

ALBION K. PARRIS.
Second Comptroller.

Endorsed: "No. 13280—Charles J. Catlett."

No. 13.

"*An act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other perposes,*" *approved April* 9, 1816; *and the act to amend the same, approved March* 3, 1817.

The original act, by the 1st and 2d sections, provides compensation for "horses" killed in battle, or dying of wounds received in battle, or for want of forage, &c.; or "in consequence" of the owner being "dismounted, or separated and detached from the same," &c.

By the 3d section, compensation is provided for damage "by the loss, capture, or destruction, by an enemy, of any horse, mule, ox, wagon, cart, boat, sleigh, or harness, while such property was in the military service of the United States," &c.

By the 5th section, "for property that has been impressed or taken by public authority for the use or subsistence of the army, &c., and the same shall have been destroyed, lost, or consumed."

By the 9th section, for damage by the destruction of private "houses or buildings by the enemy, while the same were occupied as a military *deposite*, under the authority of an officer or agent of the United States," &c.: "provided it shall appear that such occupation was the cause of the destruction."

In the amendatory act of the 3d of March, 1817, it is declared that the original act shall "extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposite for military or naval stores, or as barracks for the military forces of the United States," &c.

The 3d section provides compensation for any person "who has sustained damage by the loss of any horse, mule, ox, wagon, cart, boat, sleigh, or harness *while* such property was in the military service of the United States, either by impressment or contract," &c.

Endorsed: "Abstract of the laws of the 9th of April, 1816, and the 3d of March, 1817."

IN THE HOUSE OF REPRESENTATIVES, *February* 22, 1843.

Mr. LINN, from the Committee on Public Expenditures, to which the subject had been referred, submitted the following supplemental report:

The Committee on Public Expenditures, to whom was referred a resolution of the House instructing them "to inquire into the nature of a claim formerly presented to Congress by Charles J. Catlett, of Virginia, which, by a law passed on the 2d July, 1836, *the proper accounting officers of the Treasury Department were authorized and directed to settle upon the principles of the acts of Congress of the 9th of April,* 1816, *and 3d of March,* 1817; *whether said claim has been settled, and what amount paid; whether the accounting officers of the Treasury Department allowed said claim on principles established by the laws above referred to, or whether it was done upon the authority or order of the President of the United States, and settled upon the principles authorized by law; why such settlement was not made at an earlier period; and if upon such order of the President, under what law or by what authority he directed the payment of such claim; and whether such claim was first referred to be paid on such order, and by what authority and under what circumstances the said accounting officer ultimately allowed it, and to what fund such payment was charged; and to report any and all the circumstances deemed pertinent, connected with the settlement of said claim," respectfully report:*

That, on the 30th day of August last, the committee submitted a report in relation to the matters referred to them.—(See Rep. No. 1103, H. R.) This report was confined to the testimony taken before the committee and certain letters of the President, directing the action of the department of the government to whom belonged the consideration of the claim of *Mr. Catlett.* Since the making of that report,

complaints that it is incomplete, and does injustice to the persons interested, inasmuch as it is unaccompanied with copies of the papers upon which the action of the government was founded, have reached the committee. With the view of removing the cause of these complaints, and supplying the deficiences of the former report, the committee beg leave to submit the papers referred to. A list of them will be found subjoined to the letter of the Auditor, from whose office the copies were obtained.

TREASURY DEPARTMENT,
Third Auditor's Office, February 15, 1843.

SIR: I have the honor to acknowledge the receipt of your letter of the 8th instant, returning to me the papers in the case of Charles J. Catlett, in two parcels, and requesting to be furnished with copies of those contained in one of the bundles, in order that they may be reported to the House.

A transcript of the papers contained in the parcel designated to be copied, and a list of which is subjoined, has accordingly been made, and is herewith transmitted.

With great respect, your most obedient servant,
PETER HAGNER, *Auditor.*

Hon. A. L. LINN,
Chairman Com. on Public Expenditures, H. R.

List.

Copy of letter from the Third Auditor to Hon. P. Ihrie, January 25, 1832.
Senate printed report No. 55, January 13, 1835.
Senate printed bill No. 101, January 13, 1835.
Senate printed bill No. 95, January 27, 1836, with endorsement of the President, June 7, 1841.
Decision of accounting officers, December 30, 1836.
Copy of a letter from the Hon. D. Webster to Second Comptroller, February 27, 1837.
Copy of a letter from R. Smith, esq., to the Solicitor of the Treasury, September 11, 1841.
Certificate of the Register of the Treasury, September 12, 1841.
Certificate of the Fourth Auditor, September 20, 1841.
Instructions of the President, (no date.)
Report of the acting Third Auditor, September 20, 1841.
Instructions of the President, September 21, 1841.
Additional instructions of the President, September 23, 1841.
Additional report of the Third Auditor, September 28, 1841.
Attorney General's opinion, and his and R. Smith's letters, September 28, 1841.
Second Comptroller's letter to Third Auditor, September 29, 1841.
Official statement and report No. 13280, September 29, 1841.

List of papers laid before the Attorney General.
Abstract of the laws of 9th April, 1816, and 3d March, 1817.

TREASURY DEPARTMENT,
Third Auditor's Office, January 25, 1832.

SIR: In reply to your letter of the 23d instant, expressing that the Committee of Claims had instructed you to request such information in relation to the claims it enclosed as might be within my possession, I have the honor to observe, so far as concerns the one in the name of Charles J. Catlett, whose petition appears to have for its object the passage of a law to indemnify him for a large quantity of tobacco represented to have been, during the late war with Great Britain, deposited in the public warehouse in Nottingham, to have been used by George W. Biscoe, then commanding a detachment in the Maryland militia, in erecting a breastwork to shelter and defend his men against the attacks of the enemy, and to have been taken possession of by the enemy, and destroyed or converted to their own use; that the records of the late commissioner of claims cannot be found to afford any evidence of the exhibition to him of any claim for the tobacco in question; that one of the laws he had to administer authorized payment for property taken for the use of the army, and destroyed, lost, or consumed, on the claim being sustained by such evidence as the regulations established for his government prescribed; and that no reason appears to be assigned for the non-presentation of a claim for remuneration to him, while the laws alluded to were in existence, nor yet for the non-obtainment of any testimony on the subject for more than fourteen years, when the facts and circumstances may be supposed to have, in a considerable degree, escaped from recollection.

The only document accompanying the petition is a letter to the petitioner, from Mr. Biscoe, dated 28th August, 1828, verified on oath; and the evidence he has therein given seems to be indefinite in the extreme. It is as follows: "At your request for information in relation to the tobacco, your property, taken from the warehouse at Nottingham, by the British, during the period of their invasion, I have to state that a part of your tobacco was used, by my order, as commanding officer at Nottingham, for the purpose of erecting a breastwork for the defence of the place; and, to the exception of three or four hogsheads, I am confident, out of the sale I made to you of one hundred and five hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a part of the tobacco thus used was sold by him toyou." Mr. Biscoe has not, it will be perceived, designated either *how much* of the petitioner's tobacco was included in the *part* used by his order in erecting a breastwork, or the *date* at which it was thus taken and used, nor declared that it was in *such use* at the time it was taken by the enemy. According to the language of the letter, near the beginning, it was "*taken from* the warehouse at Nottingham, *by the British;*" *and hence it* may be inferred that the use

thereof as a breastwork had ceased, and that it had been returned to the warehouse before the arrival of the enemy.

The papers are returned.

With great respect, your most obedient servant,

P. HAGNER, *Auditor.*

Hon. PETER IHRIE,
Committee of Claims

Endorsed: Copy of a letter to Hon. Peter Ihrie, of Committee of Claims of House of Representatives, from Third Auditor, dated January 25, 1832.

IN SENATE OF THE UNITED STATES, *January* 13, 1835.

Mr. TYLER made the following report, with Senate bill No. 101.

The Committee on Finance, to whom was referred the petition of Charles J. Catlett, respectfully report:

That the losses of the petitioner appear to have been very severe, by reason of the military operations of the enemy, during the late war with Great Britain. He had large quantities of flour and tobacco in store at Alexandria, and considerable quantities of tobacco in the Maryland warehouses, situated at various points on the waters making into the Chesapeake bay, all of which were burnt, captured, or destroyed by the enemy. In regard to the chief bulk of his losses, the committee can perceive no safe principle on which they can rest in recommending an allowance. The utmost extent to which the government can with safety go, in remunerating losses to individuals who have been subjected to injury by the fortunes of war, is to protect them against *its own act and its consequences.* Thus, if a house be occupied by the troops of the country, for military operations, it thereby is placed on the footing of any other military position, and may be justifiably destroyed by the enemy. So, if private property is used to assist in the defence of the country, or in the prosecution of offensive military operations, it becomes as liable to be destroyed by the enemy as any part of the material of the army; and, if destroyed, the government is fairly answerable for its value. Keeping this principle in view, the committee can find no sufficient authority to recommend the payment of by far the largest portion of the claim set up by the petitioner. But there are portions of the claim which the committee consider as falling under the principle thus laid down. The petitioner had in store, at Magruder's warehouse, on the Patuxent river, 115 hogsheads of tobacco, which, along with the warehouse, appear to have been burnt by the British, in June, 1814. He had also a small number of hogsheads in store at Cedar Point warehouse, which were destroyed in the same way. *The proof is satisfactory to show that very smart conflicts between detachments of the enemy and Maryland troops* occurred at both these places, and that at

Nottingham warehouse, seven miles distant from Magruder's, where the petitioner had in store 149 hogsheads of tobacco, a breastwork was made of the tobacco, for the defence of the American troops.

While at Magruder's and Cedar point, the American troops found shelter under the warehouses, and from thence continued to fire on the enemy until their ammunition was expended. It is also in proof that other warehouses, equally exposed, were left unburnt, in consequence, as is believed, of the absence of all military operations in their immediate neighborhood, by the troops of the United States. The destruction of the warehouses at Magruder's and Cedar Point, with their contents, and the abduction of the tobacco from Nottingham, seem fairly to be traceable to the principle laid down by the committee; and to this extent they report a bill for his relief. The committee have not been able to satisfy themselves as to the proper price which should be allowed for the tobacco thus destroyed and carried off. At the time of the destruction, the prices for tobacco were merely nominal; but, after the restoration of peace, the price became high. It is fairly to be inferred that the petitioner would have continued to hold it until the peace, say for one year or more, he being at the time a merchant of wealth and respectability, and, like others in the country, indulging in speculation in an article which time improves in quality, flavor, and price. Under all the circumstances, however, it has been deemed most advisable to submit the subject to an equitable decision on the part of the accounting officers, when the intention of the petitioner can be better inquired into, and a more satisfactory result attained.

IN SENATE OF THE UNITED STATES, *January* 13, 1835.

Mr. TYLER, from the Committee on Finance, reported the following bill; which was read and passed to a second reading:

A BILL for the relief of Charles J. Catlett.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and directed to settle and allow, upon just and equitable principles, the claim of Charles J. Catlett for tobacco which belonged to him at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland, and was lost, captured, or destroyed, by the British or American troops, during the last war between the United States and Great Britain; which said allowance shall be carried to the credit of the said Charles J. Catlett on the books of the treasury.

Endorsed: Bill rejected in 1835—January 13, 1835.

IN SENATE OF THE UNITED STATES, *January* 27, 1836.

Mr. WEBSTER, from the Committee on Finance, reported the following bill; which was read and passed to a second reading:

A BILL for the relief of Charles J. Catlett.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and directed to settle and allow, upon the principles of the acts of Congress of the 9th April, 1816, and 3d March, 1817, the claim of Charles J. Catlett for tobacco which belonged to him at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland, and was lost, captured, or destroyed by the British or American troops, during the last war between the United States and Great Britain; which said allowance shall be carried to the credit of the said Charles J. Catlett on the books of the treasury.

Endorsed: I remember having looked into the testimony accompanying Mr. Catlett's case, and out of which this bill originated, when I was a member of the Senate. The subject was then discussed, in which discussion I bore a part, and my opinion was favorable to the claimant. I refer it now to the decision of the Attorney General, on the questions which may arise out of the testimony.

JOHN TYLER.

JUNE 7, 1841.

Report of the Third Auditor on the claim under the act for the relief of Charles J. Catlett.

TREASURY DEPARTMENT,
Third Auditor's Office, December 30, 1836.

The claim he has preferred is as follows:

To loss of tobacco by British spoliation during the last war, and for which Congress has ordered restitution, viz:

149 hogsheads at Nottingham.
115 do. at Magruder's.
4 do. at Cedar Point.

Total, 268 hogsheads tobacco, at $96 90⅔—$25,970 27.

To interest from 17th November, 1815, at which time, and at the above rate per hogshead, he sold the remnant and refuse of his tobacco to Phineas Janney, of Alexandria.

At the 2d session of the 23d Congress, (January 13, 1835,) a bill for his relief appears to have been reported from the Committee on Finance of the Senate, accompanied by a report, which was ordered to be printed. After mentioning therein that his losses appeared to have

been very severe, by reason of the military operations of the enemy during the late war with Great Britain, and that he had large quantities of flour and tobacco in store at Alexandria, and considerable quantities of tobacco in the Maryland warehouses, situated at various points on the waters making into the Chesapeake bay, all of which were burnt, captured, or destroyed by the enemy, the committee proceeded to observe that, in regard to the chief bulk of his losses, it could perceive no safe principal upon which it could rest in recommending an allowance; that the utmost extent to which the government can with safety go, in remunerating losses to individuals who have been subjected to injury by the fortunes of war, is to protect them *against its own act and its consequences.* Thus, if a house be occupied by the troops of the country for military operations, it thereby is placed on the footing of any other military position, and may be justifiably destroyed by the enemy; so, if private property is used to assist in the defence of the country, or in the prosecution of offensive military operations, it becomes as liable to be destroyed by the enemy as any part of the material of the army; and, if destroyed, the government is fairly answerable for its value. That, keeping this principle in view, the committee could find no sufficient authority to recommend the payment of by far the largest portion of the claim set up by the petitioner, but that there were portions of the claim which the committee consider as falling under the principle thus laid down; that the petitioner had in store at *Magruder's warehouse*, on the Patuxent river, 115 hogsheads of tobacco, which, along with the warehouse, appear to have been burnt by the British in June, 1814; that he had also a small number of hogsheads in store at Cedar Point warehouse, which were destroyed in the same way; that the proof was satisfactory to show that very smart conflicts between detachments of the enemy and Maryland troops occurred at both places; and that at Nottingham warehouse, seven miles distant from Magruder's, where the petitioner had in store 149 hogsheads of tobacco, a breastwork was made of the tobacco, for the defence of the American troops; that, *while at Magruder's* and Cedar Point, the American troops found shelter under the warehouses, and from therein continued to fire on the enemy until their ammunition was expended; *that it was also in proof that other warehouses, equally exposed, were left unburnt, in consequence, as was believed, of the absence of all military operations in their immediate neighborhood by the troops of the United States;* that the destruction of the warehouses at *Magruder's* and Cedar Point, with their contents, and the abduction of the tobacco from Nottingham, *seemed fairly to be traceable to the principle laid down by the committee, and to that extent it reported a bill for his relief;* that the committee had not been able to satisfy themselves as to the proper price which should be allowed for the tobacco thus destroyed and carried off; that, at the time of the destruction, the prices for tobacco were merely nominal, but after the restoration of peace the prices became high; that it was fairly to be inferred that the petitioner would have continued to hold it until the peace—say one year more—he being at the time a merchant of wealth and respectability, and, like others in the country, indulging in speculation in an article which time improved in quality, flavor, and

price; and that, under all the circumstances, it had been deemed most advisable to submit the subject to an equitable decision on the part of the accounting officers, when the intentions of the petitioner could be better inquired into, and a more satisfactory result attained. The bill to which the report refers authorized and directed the proper accounting officers of the Treasury Department to settle *and allow, upon just and equitable principles*, the claim of Charles J. Catlett, for tobacco which belonged to him at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland, and was lost, captured, or destroyed by the British or American troops during the last war between the United States and Great Britain; and prescribed that the allowance should be carried to the credit of said Charles J. Catlett on the books of the treasury.

On the 19th February, 1835, the bill appears to have been rejected; and on the following day a reconsideration of the vote was moved, and the motion laid on the table. No further action on it appears to have been had during the session.

At the last session of Congress another bill for the relief of Charles J. Catlett, in precisely the same form as the one before noticed, was reported from the Committee of Finance of the Senate, unaccompanied by any report in relation to it. This bill appears to have been read a second time, and considered as in Committee of the Whole, on the 29th March, 1836, and to have been then, on motion, ordered to lie on the table, where it rested till the 24th June following, when the consideration of it, as in Committee of the Whole, is shown to have been resumed, and, when it was amended, reported to the Senate, and the amendment concurred in; and in the amended form it afterwards bebecame a law. The amendment consisted in substituting for the words "and allow upon just and equitable principles" these: "*upon the principles of the acts of Congress of the 9th April*, 1816, *and 3d March*, 1817." In acting on the claim, therefore, the accounting officers will have to be governed not by the views of the committee on the principles laid down in their report, but by the principles of the acts referred to. So far as respects the first of those acts, the principles in question are contained in the 9th section thereof, and which provided that any person who in the late war between the United States and Great Britain sustained damage by the destruction of his or her house or building by the enemy, while the same was occupied as a military deposit under the authority of an officer or agent of the United States, should be allowed and paid the amount of such damage, provided it should appear that such occupation was the cause of the destruction. And the act of the 3d March, 1817, provided that the aforesaid 9th section should be construed to extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States.

Part of the testimony adduced in support of the claim consists of two letters, dated 28th August, 1828, and 27th February, 1832, addressed to the claimant by George W. Biscoe, who appears to have been in service as a major of militia of the State of Maryland. The first of these letters is verified on oath, and in it the writer has thus

expressed himself: "At your request for information in relation to the tobacco, your property, taken from the warehouses at Nottingham by the British during the period of their invasion, I have to state that a part of your tobacco was used by my order, as commanding officer at Nottingham, for the purpose of erecting a breastwork for the defence of the place; and, to the exception of three or four hogsheads, I am confident, out of the sale I made to you of 105 hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a part of the tobacco thus used was sold by him to you." The other letter contains a statement which the writer represents to be made on honor, as a brigade commander of the militia of Maryland, and as an officer holding a commission of surveyor and inspector of the revenue under the general government, and to be such as he can verify on oath, if necessary. This statement is as follows: "*You request information on the subject of the defence of Magruder's warehouses in June*, 1814, *by a detachment of militia acting under my orders. In reply, I have to state that the captain in command reported to me his rencounter with the enemy at that place. He stated that, on the near approach of the British barges (said to be) under the command of Commodore Barry and Colonel Malcomb, of marines, he posted his men behind the warehouses, situated within thirty yards of the shore; and that so soon as his fire of musketry could be deemed effectual he commenced, and continued to do so for an hour or two, being under cover of the warehouses; finally his ammunition became expended, and he was compelled to retire. The enemy then landed and set fire to the warehouses, which were burnt.* I am aware that you sustained considerable loss in tobacco there and elsewhere on the Patuxent river, from the circumstances of your having purchased of me more than one hundred hogsheads, which, with the exception of a few (say, to the best of my recollection, four or five) at the warehouses here, were either burnt in Magruder's warehouses at the period above stated, or were carried away by the enemy, on their retreat from the city of Washington to their shipping at this place. At one period I used the tobacco in the warehouses here for military purposes, a part of which I recollect was your property, having sold it to you."

This letter is denoted to have been written at Nottingham. Another portion of the evidence adduced is contained in depositions of Jesse Selby and James Baden, dated 20th December, 1833, and 20th February, 1835, the former of whom has testified that *he was stationed at Magruder's warehouse, on the Patuxent river, in June*, 1814, *in a company of Maryland militia commanded by Captain Joshua Naylor; and that the said warehouse, he verily believed, was burnt in consequence of the said company being there, and the said warehouse affording protection, and being occupied by them; also, that Captain Naylor died in the year* 1825. And Mr. Baden has testified that General G. W. Biscoe, commanding the Maryland militia on the 17th June, 1814, (then Major Biscoe,) ordered the tobacco to be rolled out of the warehouses in Nottingham, a large breastwork to be made of the tobacco, and the cannon to be planted behind it; that the militia then fired on the British, who *manned eleven barges*, commanded by Commodore Bar-

ry, who, at the time, retreated; that the British, some time after, took the most of the tobacco from that warehouse, and kept possession of the waters of the Patuxent river as high as Nottingham until they burnt the Capitol; that Captain Naylor's company of Maryland militia were stationed behind Magruder's warehouse, and, as soon as the British barges came within gunshot, commenced firing upon them, and continued until the ammunition was expended; that they then retreated, and the enemy immediately landed, set fire to the warehouse, and burnt all the tobacco within it; that this was on the 17th June, 1814, the day the militia prevented them from coming to Nottingham, which, probably, prevented that warehouse from sharing the same fate; that the witness was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham; that Charles J. Catlett was a large owner of tobacco, and a very heavy sufferer; that the witness was appointed inspector, in January, 1813, at Magruder's warehouse; and that, previous to his appointment, James Naylor was the inspector. In these papers, no testimony can be perceived by the Third Auditor which will serve to bring the claim within the principles of the acts of 1816 and 1817, before noticed. Of the use of the warehouse at Nottingham for any military purpose there is no proof whatever, nor yet of its having ever been destroyed by the enemy; and that the taking of the tobacco therefrom by the enemy was not at the time at which the same was rolled out and used as a breastwork by the American troops, nor till months thereafter, is evident—the latter transaction appearing by Mr. Baden's deposition to have been on the 17th June, 1814, and the former appearing by Major Biscoe's last letter to have been on the retreat of the enemy from the city of Washington; wherefrom, according to historical evidence, they retired on the night of the 25th August, 1814. And had the taking of the tobacco by the enemy been while it was in the use of the American troops, and because thereof, the testimony affords no means of determining the quantity used in the breastwork, nor what portion of that belonged to the claimant.

As to Magruder's warehouse, it is not pretended to have ever been occupied as a place of deposit for military or naval stores, or as barracks for the military forces of the United States, either by or without an order of an officer or agent of the United States; and a like remark is applicable to the warehouse at Cedar Point, the testimony in relation to which is contained in letters of the Hon. B. J. Semmes and the Hon. D. Jenifer to the Committee of Claims, each dated February 27, 1832. The latter gentleman represents that some schooners of the enemy were anchored off the warehouse; that some of the crews landed and were in the act of taking away some of the tobacco, when General Stuart, the commander of the troops in the vicinity, ordered them down, and commenced an attack with artillery upon the enemy at the warehouse; that, after firing several shots from cannon, &c., the warehouse was set fire to by the enemy, and burned to the ground, with all the tobacco then in the house; that, had the attack not been made by the American troops, the house, it is believed, would not have been fired, as above and below, on the *Potomac, tobacco* warehouses were visited by the enemy, and not de-

stroyed; and that, being at the time acting as an aid to the general, the writer was present, and saw the attack and burning of the tobacco warehouse. From this testimony of an eyewitness, it is obvious that the destruction of the warehouse was not caused by any occupation of it by the American troops, or even of their having been stationed against it, and using it as a protection, but in consequence of their having been ordered down and attacked the enemy when in possession of it, and in the act of carrying off tobacco therefrom. It shows, too, that the enemy, in taking away tobacco, were not governed by the circumstance of the building in which it was placed having been used, or not, for a military purpose. Had not the claim appeared to the Third Auditor to be such as can in no point be brought within the principles of the acts of 1816 and 1817, he would, as to the quantities of the tobacco taken or destroyed by the enemy, belonging to the claimant, and the rates to be allowed for the same, have required additional testimony, of a kind different from that afforded by the tobacco notes, &c., produced. The present posssession of such notes is not considered as any certain evidence that the tobacco they relate to belonged to the claimant when the warehouses therein mentioned were destroyed or ravaged by the enemy, nor, indeed, that the same was then in those warehouses. To prove that the several hogsheads which the notes relate to were then in the warehouses, evidence on oath, drawn from the books of the inspector at each, would have been deemed necessary; and to prove the fact of their having belonged to the claimant, and the rates which might have been allowable for them, verified extracts from the account books of the claimant, showing the dates of purchase, and the prices paid for them, would have been requisite. It is observed, that, as respects the charge for one hundred and forty-nine hogsheads at Nottingham, the vouchers relating to *fifty-one* consist not of notes for the receipt thereof into the warehouse, but of manifests for the delivery of the same out of it; and that the vouchers as to *two* of the hogsheads at Magruder's are of the same description. In case the claim had been admissible, on the principles of the acts of 1816 and 1817, the value of the tobacco at the time it was taken or destroyed would, in conformity with the rules which governed in the settlement of claims under those acts, have had to be taken as the guide for fixing the rates of allowance; and to arrive at such value, the cost prices before the peace, and not the greatly enhanced prices obtainable thereafter, would serve as the most fit criterion. As, however, the claim is considered by the Third Auditor to be in no point allowable by the accounting officers, on the principles of the before mentioned acts of the 9th of April, 1816, and the 3d of March, 1817, according to which they are directed to settle it, he, without asking for any further testimony, refers the case to the Second Comptroller, for his decision thereon.

PETER HAGNER, *Auditor.*

ALBION K. PARRIS, Esq.,
Second Comptroller.

TREASURY DEPARTMENT,
Second Comptroller's Office, January, 1837.

I concur with the Third Auditor in regard to the claim mentioned in the foregoing report.

ALBION K. PARRIS, *Comptroller.*

Endorsed: (Copy.) Decision of the accounting officers, December 30, 1836.

WASHINGTON, *February* 27, 1837.

Mr. C. J. Catlett has spoken to me respecting a bill passed last session for his relief.

I can only say that the committee who reported the bill were satisfied that a case was proved by the evidence which entitled him to compensation; that the bill was intended to be a positive enactment for relief, and not a mere reference to the judgment of the accounting officers; and that, when the bill was amended in the Senate, it was not understood by me, nor do I suppose it was by others of the committee, that the reference to former or other laws was for any other purpose than to regulate the manner of proceeding in fixing on amounts.

It would seem that unless the act be so construed as to have established the existence of a case fit and proper for relief, it was a useless and vain exercise of legislative power.

I do not know how far these suggestions may be fit to influence your consideration of the matter, but have made them at Mr. Catlett's request, and shall be happy if it should be found consistent with the terms of the law to grant him that relief which I know the committee intended.

Your obedient servant,

DANIEL WEBSTER.

Hon. ALBION K. PARRIS.

Endorsed: Copy of letter from the Hon. Daniel Webster to the Second Comptroller, 27th February, 1837.

SEPTEMBER 11, 1841.

SIR: The Attorney General having decided that Mr. Charles J. Catlett is entitled to relief under the act passed for his benefit in the year 1836, and being satisfied that the amount which, in a fair valuation of his property destroyed or taken by the enemy during the late war, would exceed the claim which the United States holds against Mr. Catlett, you will be pleased to return to Mr. Catlett the mortgage or lien which the United States holds against the property of Mr. Catlett in the town of Alexandria.

CHARLES B. PENROSE, Esq.,
Solicitor of the Treasury.

Endorsed: (Copy.) Letter from Richard Smith, esq., to the Solicitor of the Treasury, September 11, 1841.

TREASURY DEPARTMENT,
Register's Office, September 18, 1841.

I hereby certify that there is due from Charles J. Catlett, in relation to protested bills of exchange purchased from him, the sum of five thousand six hundred and thirty-three dollars and ninety-three cents, agreeably to the First Auditor's report No. 58753.

T. L. SMITH, *Register.*

$5,633 93.]

Endorsed: Certificate of the Register of the Treasury, 18th September, 1841.

TREASURY DEPARTMENT,
Fourth Auditor's Office, September 20, 1841.

I certify that Charles J. Catlett, late contractor, stands charged on the books of this office with a final balance of three thousand two hundred and twenty-eight dollars and six cents.

A. O. DAYTON.

$3,228 06.]

Endorsed: Certificate of the Fourth Auditor, September, 1841.

Let Mr. Catlett procure a statement of the amount of his debt to the government. Let him have a conjectural statement made of the value of the tobacco—

First, at the war price;

Second, at the peace price; and let these be reported to me.

J. TYLER.

Mr. Hagner will make the statement as early as possible.

Endorsed: Instructions of the President of the United States, September, 1841.

TREASURY DEPARTMENT,
Third Auditor's Office, September 20, 1841.

SIR: In obedience to your instructions in the case of Charles J. Catlett, which require the *procuring* by him of a statement of the

amount of his debt to the government; the making a conjectural statement of the value of the tobacco—

First, at the war price;

Second, at the peace price;

and the reporting these to you by this office, I have the honor to report that, by certificates of the Register of the Treasury and Fourth Auditor, Mr. Catlett appears to stand indebted—

On the books of the former in the sum of.....	$5,633 93
And on the books of the latter in the sum of.....	3,228 06
	8,861 99

To show the war price, Mr. Catlett has procured certificates from John Kurtz, esq., and General Walter Smith, the former expressing that, on reference to the books of Bowie & Kurtz, who were large purchasers of Maryland tobacco, he found that the best crops of Patuxent growth were worth about $50 per hogshead, average; and General Smith declaring that he would rate the best crops of Maryland tobacco, during the late war with Great Britain, at about $60 per hogshead, adding that the above estimated value of the crops of the best Maryland tobacco is to be understood as including firsts and seconds of the same crops; and that the purchases made by Mr. Catlett on the Patuxent had always been understood by him to be among the best crops in that vicinity.

Relative to the peace price, a sale appears to have been effected by Mr. Catlett, to P. Janney, esq., in November, 1815, of five hogsheads, (two of firsts and three of seconds, and which he represents to have been refuse,) at $96 90⅔ on an average—the rate charged in the claim heretofore preferred by him, and at which, although urging it to be too low, he is understood to be disposed to have it, for the present purpose, now rated.

Taking the quantity of tobacco, as charged in the claim of Mr. Catlett, at 268 hogsheads, the war price, assuming the average between $50 and $60 per hogshead, (the rates specified in the certificates of Mr. Kurtz and General Smith, say $55,) would amount to $14,740; and the peace price, at the rate Mr. Catlett heretofore charged, as aforesaid, would amount to $25,970 27.

As regards the actual quantity of tobacco, the property of Mr. Catlett, taken or destroyed by the enemy in the warehouses, no further evidence, it is observed, has been adduced to remedy the defects pointed out in the latter part of the Third Auditor's report on the case, dated 30th September, 1836, a copy whereof is amongst the papers, and to which I respectfully refer.

Apprehensive that you may not be informed of the facts about to be mentioned, I deem it incumbent on me to add, that in pursuance of a resolution of the Senate, passed on the 29th January, 1839, all the papers in the case, and a copy of the report of the Third Auditor, before mentioned, were transmitted to the Senate, and referred to the Committee of Claims; and that in a few days thereafter, on motion of the chairman of that committee, it was "ordered that the Committee of Claims be dis-

charged from the further consideration of the petition of Charles J. Catlett, and that the petitioner have leave to withdraw his petition and papers.

With the highest respect, your most obedient servant,

J. THOMPSON, *Acting Auditor.*

The PRESIDENT OF THE UNITED STATES.

Endorsed: Report of the acting Third Auditor to the President, September 20, 1841.

SEPTEMBER 21, 1841.

The President has carefully examined the opinion of the Attorney General, the report from the Third Auditor's office, and the leading facts attendant on the destruction of the tobacco, and can see no reason to differ with the Attorney General in the conclusion to which he has come, that Mr. Catlett is fairly entitled to remuneration for the tobacco destroyed, and the only difficulty being to ascertain whether he is entitled to receive the war or peace price; and either the one or the other exceeding the claim of the government against him, I think it proper that he should receive a quietus or discharge from the government for its claims. Such discharge will, therefore, be given, and a credit be allowed to that extent on the books of the Treasury.

JOHN TYLER.

Copied from the original, by J. H. SMITH.

Endorsed: Instructions of the President of the United States, September 21, 1841.

SEPTEMBER 23, 1841.

The President has examined the claim of Charles J. Catlett under the special act passed for his relief, and, believing it to be a meritorious claim, directs the accounting officers to re-examine the case, and, if they cannot admit the claim, to report the case specially to him, with their reasons for their disallowance. It is desirable that their action should be had as soon as practicable.

Endorsed: Additional instructions of the President of the United States, 23d September, 1841.

Additional report of the Third Auditor on the claim of Charles J. Catlett, under the act of Congress for his relief approved 2d July, 1836, *made in pursuance of instructions from the President of the United States dated 23d September,* 1841, *directing the accounting officers to re-examine the case, and, if they cannot admit the claim, to report the case specially to him, with their reasons for their disallowance.*

TREASURY DEPARTMENT,
Third Auditor's Office, September 28, 1841.

Reference is made, in the first instance, to the report of the Third Auditor, dated 30th *December, 1836,* and concurred in by the Second Comp-

troller, wherein they have decided that no part of the claim is allowable by them, "upon the principles of the acts of Congress of the 9th April, 1816, and the 3d March, 1817," agreeably to which they were, by the aforesaid acts for Mr. Catlett's relief, directed to settle it, and wherein reasons are assigned for that decision.

Mr. Catlett had, before presenting to the Senate the petition giving rise to the act for his relief, sought (so far as regards his tobacco at Nottingham) redress by petition presented to the House of Representatives; and to the report of the Committee of Claims thereon, concluding with a resolution for its rejection, printed in the 3d volume of Reports of Committees House of Representatives, 1st session, 22d Congress, No. 413, reference is also made. The papers had been referred by the committee to this office, for information; and of the Third Auditor's reply, noticed in the report, a copy is placed herewith. The subsequent petition appears to be much more comprehensive in its scope, and to have been, on its presentation to the Senate, referred to the Committee on Finance, by whom, on the 13th of May, 1834, a report was made, accompanied by a bill, on which there appears to have been no final action at that session. At the succeeding session the committee presented a like report, accompanied by a bill directing the settlement of the claim "upon just and equitable principles," and in this form the bill was rejected.

A reconsideration of the vote was moved, but without any further proceedings at that session of Congress. Another bill in the same form was reported on the 27th January, 1836, and was read a second time, and considered as in Committee of the Whole, on the 29th of March, when it was ordered "that it lie on the table." The consideration of it was resumed on the 24th of June, 1836; and having been then amended by striking out the words "*and allow upon just and equitable principles,*" and substituting the words "*upon the principles of the acts of Congress of the 9th April,* 1816, *and the 3d March,* 1817," it became the law enacted for Mr. Catlett's relief. The acts of 1816 and 1817 had to be executed by a commissioner, and who, by the 12th section of the former of those acts was required to establish, under the direction or with the assent of the President of the United States, such rules as are therein pointed out; and for the rules so established, and various others prescribed by the President for the government of the commissioner, and wherein the President's constructions of sundry provisions of the laws appear, reference is made to the 3d volume of State papers, 1st session 16th Congress, No. 41, H. R.

The duties of the commissioner commenced on the 1st July, 1816, and terminated on the 9th April, 1818; soon after which, the business then in his office, and not finally acted on by him, was, with his records and files, transferred by law to this office. On the 1st November, 1816, only four months after the commissioner entered on his office, he was prevented by the President from making any decisions under the 9th section of the law of April, 1816, being the section which made provision for the payment for damages by the destruction of buildings by the enemy while the same where occupied as a military deposit, under the authority of an officer or agent of

the United States; and, thereafter, no award was ever made by the commissioner under that section. At the following session of Congress, the President, in a message thereto, assigned as the reason for his suspending proceedings relative to the claims under the section in question, its "having received a construction giving it a scope of great and uncertain extent." The message and the report of the committee to which it was referred are printed in the 1st volume of State papers, 2d session 14th Congress, and numbered 10 and 11. The committee, in that report, have declared a decided opinion, from a conversation with the commissioner generally upon the provisions of the act, "that it had given, and was still disposed to give, to the law an extension of construction not contemplated by Congress at the time of its passage, and not warranted by its object."

An explanatory report of the commissioner may also be seen in the same volume, numbered 15. As regards claims under the 9th section of the amendatory act of the 3d March, 1817, referred to in the act for Mr. Catlett's relief, limiting the duty of the commissioner to the carefully examining and investigating the same, and reporting the facts in such [each] case to Congress, that such provision might be made for the relief of the respective claimants as should be deemed just and proper. In conformity therewith, reports of the facts in numerous cases under the aforesaid 9th section were, from time to time, reported to Congress by the commissioner, prior to the 9th April, 1818; but no provision for the relief of the claimants was enacted till the 3d of March, 1825, when a law was passed providing that any person having a claim for a building destroyed by the enemy during the late war, under the act of the 9th April, 1816, and the amendatory act of the 3d March, 1817, which had been presented to the commissioner before the 10th April, 1818, and not paid under said acts, nor finally rejected by him, might within nine months thereafter present the same, with the evidence to support it, to the Third Auditor, for examination and adjustment; and directing him, if he should be satisfied that the building or buildings for which damages were claimed "was, at the time of its destruction, occupied by order of any agent or officer of the United States as a place of deposit for military or naval stores, or as barracks for the military forces of the United States," to proceed to assess the damages and certify the amount for payment, in the way therein mentioned. A report of the Third Auditor's proceedings under the law of 1825 was made to the Senate in January, 1827, and forms Senate document No. 36, 2d session 19th Congress. That law authorizing payment for buildings only, no allowance for personal property destroyed therein was made in any case. The claims for personal property so destroyed amounted, as the report shows, to nearly $300,000, and not a dollar thereof has ever been paid by the United States—all the subsequent applications to Congress for indemnification, as to many of these cases, having failed. For the relief of owners of buildings destroyed by the enemy while occupied as places of deposit for military stores, or as barracks for the troops, by order of officers of the United States, sundry special acts have been since passed, but without authorizing in a single instance, it is believed, any payment for personal property destroyed in or taken away from such buildings.

At the 1st session of the 22d Congress, the Committee on Claims of the House of Representatives appears to have been instructed, by a resolution, to inquire into the expediency of making further provision for extending and the more effectually carrying into effect the provisions of the act of the 9th April, 1816, before mentioned; and on the 16th March, 1832, the committee made a report (printed, and numbered 386) concluding with a resolution, as follows: "*Resolved*, That it is inexpedient to legislate on the matters contained in the resolution."

The committee appended thereto a very elaborate report, made on the 5th April, 1824, by a select committee appointed to inquire what further legislative provisions were fit and necessary to carry into effect the provisions of the aforesaid act of the 3d March, 1817, amendatory of that of the 9th April, 1816. The latter report was accompanied by a bill, and which, by renewal at the succeeding session of Congress, became, it is believed, after modification, the law of the 3d March, 1825, before noticed. This general view of the course pursued in relation to cases arising under the 9th section of the law of the 9th April, 1816, by President Madison and by Congress, has been presented because it is deemed to manifest the design to have been at all times that the aforesaid 9th section should be construed strictly; and a knowledge of this course had due influence in the action of this officer on the claim, in December, 1836; and the course pursued in Congress, with reference to the particular case of Mr. Catlett, has been here again noticed, because it is considered to evince an intention that he should receive no relief, unless he could bring his claim within the principles of the aforesaid laws of 1816 and 1817.

The papers in the case appear to have been recently laid before the late Attorney General, and by whom an opinion has been given, as follows:

"I am satisfied that Mr. Catlett is entitled to relief under the special act passed for his benefit; but I have not as yet been able to bring my mind to a satisfactory conclusion as to the proper measure of compensation to be applied, namely, whether it should be the war price or the peace price that ought to be allowed.

"J. J. CRITTENDEN."

The opinion, it is observed, does not express that Mr. Catlett is entitled to relief under the special act, *upon the principles of the aforesaid laws of* 1816 *and* 1817; and, verbally, Mr. Catlett has signified that the Attorney General threw those laws entirely out of view, and relied on some other ground.

The special act appears to me to confer no power on the accounting officers to settle the claim upon any other principles than those of the laws of 1816 and 1817, to which it refers; nor do I see it declared in the opinion that the *accounting officers* would be justified in settling the claim upon different principles, under the special act, independent of any other authority.

To show that no allowance can be made on the claim, "upon the principles of the acts of Congress of the 9th of April, 1816, and 3d *of March, 1817,*" the claim will be now reviewed, taking the items *separately*, and the testimony applicable to each; and

1st. As to 149 hogsheads of tobacco at Nottingham. The earliest letter of General Biscoe to the claimant contains as follows:

"At your request for information in relation to the tobacco (your property) taken from the warehouses at Nottingham by the British during the period of their invasion, I have to state that a part of your tobacco was used by my order, as commanding officer at Nottingham, for the purpose of erecting a breastwork for the defence of the place; and, to the exception of three or four hogsheads, I am confident, out of the sale I made to you of 105 hogsheads, that the remainder was carried away by the enemy. I also recollect that Benjamin Oden, esq., remarked that a part of the tobacco thus used was sold by him to you."

The second letter from General Biscoe to the claimant purports to be in answer to a request for information as to the defence of *Magruder's* warehouses, in June, 1814, and, after representations relative thereto, proceeds thus:

"I am aware that you sustained considerable loss in tobacco there and *elsewhere* on the Patuxent river, from the circumstance of your having purchased of me more than one hundred hogsheads, which, with the exception of a few (say, to the best of my recollection, four or five) at the warehouses *here*, [the letter is expressed to have been written at *Nottingham*,] were either burned in Magruder's warehouses at the period above stated, or were carried away by the enemy on their retreat from the city of Washington to their shipping at this place. *At one period* I used the tobacco in the *warehouses here* for military purposes, a *part* of which I recollect was your property, having sold it to you."

And a deposition of James Baden contains as follows:

"General George W. Biscoe, commanding the Maryland militia, on the 17th day of June, 1814, (then Major Biscoe,) ordered the tobacco to be rolled out of the warehouse in Nottingham, Prince George's county, Maryland, and a large breastwork made of the tobacco, the cannon planted behind it; and then we fired on the British, who manned eleven barges, commanded by Commodore Barry, who at that time retreated. The heads were out of many hogsheads, and the tobacco a good deal torn out. The British, *some time after*, took the most of the tobacco from that warehouse; and they kept possession of the waters of the Patuxent river, as high as Nottingham, from that time until they burned the Capitol."

There is no proof, nor is it even alleged, that the *warehouse* at Nottingham was ever occupied for any military purpose whatever, nor yet that it was destroyed by the enemy. It must not only have been occupied, by order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States, but have been destroyed by the enemy while in such occupation, and in consequence thereof, to have brought the tobacco in it within the 9th section of the act of the 9th of April, 1816, even as construed by the commissioner.

The part of the aforesaid deposition of James Baden in which, after mentioning the breastwork, and the cannon planted behind it, he says, "and *then we fired on the British*, who manned eleven barges,"

&c., is not only unsustained by the testimony of General Biscoe, the commanding officer, but seems to be in conflict with another part of Mr. Baden's own testimony, which, as regards Magruder's warehouse, will be hereafter noticed, and in which he represents that warehouse to have been burned by the enemy, and adds: "this was on the 17th day of June, 1814, as above stated, *which day we prevented them from coming to Nottingham*, which probably prevented that warehouse from sharing the same fate."

Divested of the testimony as to that firing, the case will be devoid of all proof of any conflict at Nottingham, even in June, 1814. It seems obvious from the testimony that the tobacco then rolled out of the warehouse there, and formed into a breastwork, was only temporarily used, and that the enemy did not carry off the tobacco from the warehouse there till they were on their retreat from Washington, after burning the Capitol, in August. Had the tobacco so used been taken or destroyed while in such use, the testimony, as observed in the former report, affords no means for determining the quantity taken for the breastwork, nor how much of what was taken belonged to Mr. Catlett. General Biscoe, in his first letter, alludes to a sale by him of 105 hogsheads to Mr. Catlett; but it appears, by his second letter, that not more than four or five of them were at Nottingham—all the others being represented to have been either burnt in *Magruder's* warehouse, in June, or carried away from some other place or places on the Patuxent by the enemy, on their retreat, in August.

As to 51 of the 149 hogsheads charged as being in the warehouse at Nottingham, the vouchers, as mentioned in the former report, consists not of notes for the receipt thereof into the warehouse, but of manifests for the delivery of the same out of it. These vouchers have now been separated from the others, and will be found to show that 35 of the 51 were delivered in 1812 and 1813, to George Biscoe & Son, and put in their barn; that two others were delivered, in 1813, to George Biscoe, and put in his barn; that four others were delivered, in 1811, 1812, and 1813, to Francis Green, William Morton, and Edward Skinner, and put in George Biscoe's barn; that two others were delivered in March, 1814, to William Sasscer, and put in George Biscoe's barn; that six others were delivered in 1813, to Gerrard Greenfield, and put in the red barn; and that the remaining two were delivered, in 1813, to Walter T. Greenfield, and put in the red store. Any military occupation of these barns and store at any time is not proved or even alleged; nor is there any proof or allegation of the destruction of those buildings by the enemy, or of the carrying off by them of any tobacco therefrom.

2d. As to 115 hogsheads of tobacco at Magruder's.—The statement in relation thereto, in General Biscoe's second letter to the claimant, is as follows: "You request information on the subject of the defence of Magruder's warehouse, in June, 1814, by a detachment of militia acting under my orders. In reply, I have to state that the captain in command reported to me his rencounter with the enemy at that place. He stated that, on the near approach of the British barges (said to be) under the command of Commodore Barney and Colonel Malcomb, of

marines, he posted his men behind the warehouses, situated within thirty yards of the shore; and that so soon as his fire of musketry could be deemed effectual, he commenced, and continued to do so for an hour or two, being under cover of the warehouses. Finally his ammunition became expended, and he was compelled to retire. The enemy then landed and set fire to the warehouses, which were burnt." The remaining part of the statement has been previously cited.

Jesse Selby, in a deposition dated December 20, 1833, has testified that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia, commanded by Captain Joshua Naylor; and that the warehouse, he verily believes, was burnt in consequence of the said company being there, and the said warehouse affording protection, and being occupied by them; also, that Captain Naylor died in the year 1825. And, in the aforesaid deposition of James Baden, he has testified that Captain Naylor's company of Maryland militia was stationed behind Magruder's warehouse, and as soon as the British barges came within gunshot commenced firing upon them, and continued until the ammunition was expended; and that they then retreated, and the enemy immediately landed, set fire to the warehouse, and burnt all the tobacco within it; that this was on the 17th June, 1814, the day the militia prevented them from coming to Nottingham, which probably prevented that warehouse from sharing the same fate; that the witness was inspector at Magruder's warehouse, but commanded a company on that day at Nottingham; that Charles J. Catlett was a large owner of tobacco, and a very heavy sufferer; that the witness was appointed inspector in January, 1813, at Magruder's warehouse, and that previous to his appointment James Naylor was the inspector; that the warehouse was, at the time of its destruction, or indeed at any time, occupied by order of an officer or agent of the United States, as a place of deposite for military or naval stores, or as barracks for the troops is not pretended; and without such an occupation thereof, at the time of destruction, the tobacco destroyed in it could not have been paid for under the 9th section of the act of the 9th April, 1816, even as construed by the commissioner. The tobacco could not have been brought within that section without bringing the building also within it, and the non-presentation of a claim for the destruction of the building may be viewed as a strong manifestation that its owners were satisfied that there had been no such military occupation of it as to entitle them to any remuneration for its destruction under the laws of 1816 and 1817.

3d. As to 4 hogsheads of tobacco at Cedar point.—The testimony in relation to the destruction of the warehouse there is contained in letters of the Hon. B. J. Semmes and the Hon. D. Jenifer, and with reference to which it may suffice here merely to recite, from the report of this office, the following observations: "From this testimony of an eye-witness, it is obvious that the destruction of the warehouse was not caused by any occupation of it by the American troops, or even of their having been stationed against it, and using it as a protection, but in consequence of their having been ordered down and attacked the enemy *when in possession* of it, and in the act of carry-

ing off tobacco therefrom. It shows, too, that the enemy, in taking away tobacco, were not governed by the circumstance of the building in which it was placed having been used, or not, for a military purpose."

Unable to perceive that the accounting officers possess any power, under the special act for Mr. Catlett's relief, to settle his claim upon any other principles than those of the laws of the 9th April, 1816, and 3d March, 1817, therein mentioned; or that upon the principles of those laws, as the same have been at all times construed in acting under them, any portion of the claim can be allowed by the accounting officers, I am constrained by a sense of duty, without making an allowance on it, to again report the case to the Second Comptroller, for his decision thereon.

PETER HAGNER, *Auditor.*

ALBION K. PARRIS, Esq.,
Second Comptroller.

I am satisfied that Mr. Catlett is entitled to relief, under the special act passed for his benefit, but I have not as yet been able to bring my mind to a satisfactory conclusion as to the proper measure of compensation to be applied—namely, whether it should be the war price or the peace price that ought to be allowed him.

J. J. CRITTENDEN.

Endorsed: Papers of Charles J. Catlett.

WASHINGTON, *September* 28, 1841.

DEAR SIR: In giving your opinion on the case of Mr. Catlett, referred to you by the President of the United States on the 7th June last, did you not have reference to the acts of 1816 and 1817; and did you not, after examining Mr. Hagner's report of the 30th December, 1836, and the other papers referred to you, come to the opinion that Mr. Catlett was entitled to relief under the special act, upon the principles of the laws of 1816 and 1817, therein referred to?

I am, sir, very respectfully, your obedient servant,

RICHARD SMITH.

Hon. J. J. CRITTENDEN,
Late Attorney General.

SEPTEMBER 28, 1841.

In the very brief opinion expressed in an endorsement on the papers of Mr. Catlett, I certainly had reference to the special act passed for his relief, and to the several acts that were therein referred to, as furnishing the rule or principle for the decision of his case. I sup*posed, of course,* that I understood the case, and had made all neces-

sary examination of it, before I attempted to give any opinion about it. Mr. Hagner's report was before me, but, imagining myself capable of forming an opinion on the case for myself, I do not know that I examined that report very thoroughly, or even that I read it entirely through. This, I presume, will be a sufficient answer to the inquiries on the preceding page.

J. J. CRITTENDEN.

TREASURY DEPARTMENT,
Second Comptroller's Office, September 29, 1841.

SIR: The Attorney General having, by direction of the President of the United States, examined the claim of Charles J. Catlett, under the act for his relief passed July 2, 1836, and having given an opinion that said Catlett is entitled to relief under that act; and having also certified that, in examining the case, and giving an opinion, he had reference to the acts of 1816 and 1817, as furnishing the rate or principle for the decision of the case, I think an account should be reported, agreeably to the opinion of the Attorney General, and the papers are accordingly referred back to you, that an account may be reported accordingly.

Respectfully, &c.,
ALBION K. PARRIS, *Comptroller.*

PETER HAGNER, Esq., *Third Auditor.*

The United States to Charles J. Catlett. DR.

For this sum allowed under a special act of Congress for his relief, aproved July 2, 1836, in pursuance of an opinion of the late Attorney General, and a decision of the Second Comptroller founded thereon, for tobacco taken or destroyed by the British during the late war with Great Britain, at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland.....	$8,861 99

TREASURY DEPARTMENT,
Third Auditor's Office, September 29, 1841.
Stated by T. GUNTON.

TREASURY DEPARTMENT,
Second Comptroller's Office, September 29, 1841.
Examined by J. SEAVER.

Endorsed: No. 13280. Account of Charles J. Catlett. Act for his relief, $8,861 99. Reported September 29, 1841. Requisition No. 9158, dated September 29, 1841, for five thousand six hundred and thirty-three dollars and ninety-three cents, to be carried to his

credit on the books of the Register of the Treasury, ($5,633 93;) requisition No. 9159, dated 29th September, 1841, for three thousand two hundred and twenty-eight dollars and six cents, to be carried to his credit on the books of the Fourth Auditor, ($3,228 06.)

[No. 13280.] TREASURY DEPARTMENT,
Third Auditor's Office, September 29, 1841.

I certify that there is due from the United States to Charles J. Catlett, under a special act of Congress for his relief, approved 2d July, 1836, and in pursuance of an opinion of the late Attorney General, and a decision of the Second Comptroller founded thereon, the sum of eight thousand eight hundred and sixty-one dollars and ninety-nine cents, for tobacco taken or destroyed by the British during the late war with Great Britain, at Magruder's warehouse, Cedar Point warehouse, and Nottingham warehouse, all in the State of Maryland, and for which amount two requisitions will issue in favor of the Treasurer of the United States, one for the sum of five thousand six hundred and thirty-three dollars and ninety-three cents, to be carried to the credit of the said Charles J. Catlett on the books of the Register of the Treasury; and the other for three thousand two hundred and twenty-eight dollars and six cents, to be carried to his credit on the books of the Fourth Auditor, as appears from the statement and vouchers, herewith transmitted, for the decision of the Second Comptroller of the Treasury thereon.

PETER HAGNER, *Auditor.*

ALBION K. PARRIS, Esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance, this 29th day of September, 1841.

ALBION K. PARRIS,
Second Comptroller.

Endorsed: No. 13280. Charles J. Catlett.

Papers of Mr. Catlett left with Attorney General, June 7, 1841.

Copy of law of Congress for his relief, with an endorsement thereon by the President, referring the case to him.

Copy of Mr. Webster's letter to Judge Parris, 27th February, 1837.

Mr. Catlett's account $25,970 27, with interest from 17th November, 1815.

Bill of P. Janney to Mr. Catlett, showing the price of the tobacco *in 1815.*

Report of the committee which reported the bill.
Mr. Hagner's report.
Governor Kent's letter, marked A.
Mr. Catlett's petition.
James Baden's affidavit.
S. C. Moran's certificate.
B. J. Semmes' letter.
D. Jenifer's letter.
George Biscoe's letter.
George Biscoe's letter.
George Calvert's.
Jesse Selby's deposition.
Certificates for 149 hogsheads at Nottingham.
Certificates for 115 hogsheads at Magruder's.

Endorsed: List of papers laid before the Attorney General, 1841.

"*An act to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes,*" *approved April* 9, 1816; *and the act to amend the same, approved March* 3, 1817.

The original act, by the 1st and 2d sections, provides compensation for "horses" killed in battle, or dying of wounds received in battle, or for want of forage, &c.; or "in consequence" of the owner being "dismounted or separated and detached from the same," &c.

By the 3d section, compensation is provided for damage "by the loss, capture, or destruction, by an enemy, of any horse, mule, ox, wagon, cart, boat, sleigh, or harness, while such property was in the military service of the United States," &c.

By the 5th section, "for property that has been impressed or taken by public authority for the use or subsistence of the army, &c., and the same shall have been destroyed, lost, or consumed."

By the 9th section, for damage by the destruction of private "houses or buildings by the enemy, while the same were occupied as a military *deposit*, under the authority of an officer or agent of the United States," &c.; "provided it shall appear that such occupation was the cause of the destruction."

In the amendatory act of the 3d of March, 1817, it is declared that the original act shall "extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States," &c.

The 3d section provides compensation for any person "who has sustained damage by the loss of any horse, mule, ox, wagon, cart, boat, sleigh, or harness, *while* such property was in the military service of the United States, either by impressment or contract," &c.

Endorsed: Abstract of the laws of the 9th April, 1816, and 3d March, 1817.

IN THE SENATE OF THE UNITED STATES, *April* 18, 1856.

Mr. WADE made the following report, (to accompany bill S. 255.)

The Committee of Claims, to whom was referred the petition of the administrator of Rinaldo Johnson and of Ann E. Johnson, have had the same under consideration, and now report:

The petition seeks to obtain indemnity for a quantity of tobacco said to have been taken and destroyed by the British during their invasion of Maryland in the year 1814. The facts and principles involved in the several cases being identical, it was deemed proper to consider them together. These and similar claims have been frequently urged upon the attention of Congress, and numerous reports have been made, in both Houses, in which the principles, both of law and equity, involved in them, have been elaborately discussed.

During the last Congress, a bill was reported and passed the Senate for the payment of the claims of these petitioners. The report accompanying the bill contains the following statement of the case, which is adopted as a part of this report:

Commodore Barney, in 1814, commanded the United States flotilla designed by the American government to protect the Chesapeake bay and its tributaries from the naval force of the enemy; that to prevent the capture of the vessels under his command, he was compelled to abandon the Chesapeake, and was induced to sail up the Patuxent river, one of its tributaries, with the hope that the British would be unable, or at least unwilling, to follow with their larger vessels. This expectation of the commodore was not realized; he was pursued by the enemy, and was ultimately compelled to blow up his vessels to prevent their capture.

It is well known to the Senate, that from this period the Patuxent river was permanently occupied by the naval forces of the enemy, and became the point from which various military expeditions were ordered against the surrounding country, terminating with the capture of Washington, and the burning of the Capitol. General Winder was placed in command of this military division; the militia was called out to resist the landing of the British forces, and for a considerable period were successful in several instances in preventing the landing, and in all instances in driving the enemy back to their vessels.

It appears, from the evidence, that two public warehouses had been erected, many years before this period, upon the margin of the Patuxent, for the inspection and deposit of the tobacco grown by the citizens of Prince George's county—one at the village of Nottingham, the other at Magruder's Ferry; that these houses were in 1814 filled with hogsheads of tobacco, the property of the planters of that county, or of merchants who had purchased it for shipment; and that the tobacco for which remuneration is now claimed by the petitioner, R. Johnson, had been deposited in the warehouse at Magruder's Ferry. The evidence conclusively establishes the fact that the warehouse at Magruder's Ferry was burned by the British, with all the tobacco it contained.

In investigating the right of the petitioners to indemnity from the federal government, your committee at once perceive that the petitioners could never have claimed indemnity under the general laws of 1816 and 1817, because the relief designed to be afforded by those acts *expressly and exclusively* applied to injuries to *real property*. The act of 1816 provides "that any person who, in the time aforesaid, has sustained damages by the destruction of his or her *house* or *building* by the enemy, while the same was occupied as a military deposit under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage, provided it shall appear that such occupation was the cause of its destruction."

Your committee have been unable to recognize the force or propriety of the distinction which makes the United States liable for *real property* destroyed by the enemy, and which exempts the government from liability for *personal property* destroyed under the same circumstances; they are unable to appreciate the justice of a rule which makes the government liable for a house burned by the enemy, and exempts it from liability for the personal property burned in the house.

Your committee are of opinion that the United States should be held liable to reimburse her citizens, whenever private property has been (in accordance with the usages of civilized warfare) destroyed by a public enemy *because of its use* for military purposes by the authority of an officer or agent of the government.

Your committee believe that the facts, to which they will now very briefly advert, fully establish the right of the petitioners to relief, under the principles here laid down:

First. In reference to the warehouse at Magruder's Ferry, it appears that a considerable American force was stationed behind this warehouse, which, being filled with tobacco, afforded complete protection against the cannon of the enemy, and that a battle was fought with the British vessels, which continued until the ammunition of our troops was exhausted, and they were consequently obliged to retreat. It is clearly proven that upon the retreat of the American force, the British landed and burned the warehouse, with the tobacco of the petitioner, R. Johnson, and others therein contained.

Your committee further report that no possible doubt can exist as to the quantity of the tobacco which belonged to the petitioners, because it is evidenced by tobacco notes now in their possession, or deposited in the State Department, which designate each hogshead and the net weight of its contents. There are many precedents, to which your committee do not deem it necessary to refer, where the government have paid for personal property destroyed under similar circumstances. The value of the tobacco is also established by satisfactory proof, but the committee have deemed it better, in the bill which they have prepared for the relief of the petitioners, to provide that the proper accounting officers of the treasury shall ascertain, from such proof as may be laid before them, the quantity and value of the tobacco destroyed, and shall pay the value so to be ascertained.

There being no distinction in principle in the right of the petitioner to relief, the committee have reported a bill for his relief, which they confidently recommend to the favorable consideration of the Senate.

To the honorable the Senate and the House of Representatives in Congress assembled:

The memorial of Thomas Rinaldo Johnson, administrator of Rinaldo Johnson, and Sarah A. Nuttrill, administratrix of Ann E. Johnson, respectfully showeth—

That those they represent were proprietors of upwards of one hundred hogsheads of tobacco, which were stored in the Maryland inspection warehouse at Magruder's, in the said State, in the year 1814; that at the time said tobacco was stored there, in June, 1814, or thereabouts, the British troops, or sailors, on a predatory excursion, were fired upon by the American troops stationed in and about said Magruder's warehouse; that after the ammunition of the American forces was exhausted, they retreated, and the British forces immediately after landed, and burned said warehouse and its contents, including the tobacco belonging to your memorialists, or rather to the estates they represent.

Your memorialists refer, for proof of their claim, to the annexed affidavits and reports of committees of Congress, by which it will be shown the quantity of tobacco belonging to them, which was stored in said warehouse at the time of its destruction; and also that the burning of the same was in consequence of its occupation by the American troops.

Your memorialists therefore pray that they may be compensated for the loss they have thus sustained, as others have, under similar circumstances, been compensated, and they will ever pray, &c.

Respectfully submitted.

THOMAS RINALDO JOHNSON,
Administrator of Rinaldo Johnson, for himself, and for Mrs. Ann Nuttril, administratrix of Ann E. Johnson.

DECEMBER, 1849.

WASHINGTON, *June* 15, 1850.

DEAR SIR: In reply to your letter of the 20th of June, 1850, asking me for any information it may be in my power to give in relation to the burning of the warehouses known as Magruder's, on the Patuxent river, with the tobacco contained therein, by the enemy's forces in the war of 1812, I have to state that a company of militia, acting under my orders as *Major* of the 17th regiment, were posted at Magruder's warehouse for its defence, and when the British barges ascended the river on or about the 17th of June, 1814, so soon as they were deemed by Captain Joshua Nailor, (the captain in command) to be in reach of his fire, he commenced firing upon them from behind the said warehouses and continued to do so until his ammunition was expended; the enemy immediately landed and the militia retreated. The enemy then burned the warehouses with all the tobacco contained therein. I was at the village of Nottinghan on or about the 17th of *June, 1814,* (my place of residence,) distance eight miles higher up

the river, and discovered Magruder's warehouses burning. I was well acquainted with Mr. Rinaldo Johnson, and his wife, Mrs. Ann E. Johnson, and always understood they had a large quantity of tobacco in said warehouses at the time of their destruction by the British troops. In reply to your other inquiries, I have to remark, that the burning of the warehouses aforesaid was prior to the advance of the British troops to the city of Washington, it being in the month of August, 1814, that they advanced to Washington.

GEORGE W. BISCOE,
Late Brigadier General Maryland Militia.

Subscribed and sworn to at Washington city, this 24th day of June, 1850, before

JAMES CALLAGHAN, *J. P.*

WASHINGTON COUNTY, } *to wit:*
District of Columbia, }

On this 20th day of December, 1833, personally appears before me, the subscriber, a justice of the peace in and for said county, Jesse Selby, and makes oath on the Holy Evangely of Almighty God, that he was stationed at Magruder's warehouse, on the Patuxent river, in June, 1814, in a company of Maryland militia, commanded by Captain Joshua Naylor, and that the said warehouse, he verily believes, was burned in consequence of the said company being there, and the said warehouse affording protection and being occupied by them. This deponent further states that Captain Naylor died in the year 1825.

Sworn before

HENRY WIRTZ, *J. P.*

TREASURY DEPARTMENT,
Third Auditor's Office, November 30, 1850.

The foregoing is a true copy of the original on file in this office.

JNO. S. GALLAHER, *Auditor.*

WASHINGTON COUNTY, DISTRICT OF COLUMBIA,
December 20, 1850.

On this day personally appeared before me Hon. Wm. D. Merrick, of the State of Maryland, and made oath on the Holy Evangelists of Almighty God, that he has long known, personally, James Baden, of Prince George's county, Maryland, and that said Baden is a man of respectability, and every way worthy of credit. Deponent further states, that it *is within his* personal knowledge that a considerable

body of United States troops were stationed at Benedict, in 1814. He was himself there, for a time, in that month and with a detactment of four or five hundred infantry, consisting of of the 36th and 38th regiments, of one of which regiments, the he was, at that time, the adjutant; these troops and others we various times, from early in the spring of the year 1814 up to days before the landing of the British army at Benedict, statior various places on the course of the Patuxent river, sometimes body and sometimes in different detachments.

Sworn before me,

B. K. MORSELL, *Justice of the Pea*

34th Congress, 3d Session. } HOUSE OF REPRESENTATIVES. { Report No. 46.

JOSEPH M. KENNEDY.

[To accompany bill H. R. No. 652.]

January 9, 1857.

Mr. Taylor, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom the petition of Joseph M. Kennedy, with the papers accompanying it, was referred, have had the same under cons deration, and now report:

Joseph M. Kennedy is the marshal of the United States for the eastern district of Louisiana. There is no public building in the city of New Orleans for the accommodation of the United States courts; and as the government is obliged to rent what is necessary for that purpose, it sometimes happens that the place for holding the courts is changed, and that the necessity for doing so obliges the making of some expenditure to fit up the court-room, and the offices connected with it, in a suitable manner.

In 1854 one of these removals was effected; and when it was taking place, it was found that it was requisite there should be a quantity of new furniture obtained, and that there should be a number of repairs made to the old, in order to put the new rooms in a proper condition. The Hon. T. H. McCaleb, the United States district judge for the eastern district of Louisiana, directed the marshal to get what was needed for the purpose; and, acting under this direction, the marshal procured various articles of furniture, and had repairs made, as stated in the accounts on file, for which he paid the sum of three hundred and sixty-two dollars and sixty cents in November of that year.

In 1855 the marshal presented his account, with the vouchers for these payments, to the Secretary of the Interior, and he declined paying them, on the ground that he was prohibited from doing so by the proviso to the second section of the act approved February 26, 1853, (10 Stat. at Large, 165) which declares "that the marshal shall not incur an expense of more than twenty dollars in any one year for furniture," "without submitting a statement and estimates to the Secretary of the Interior, and getting his instructions in the premises."

The refusal of the Secretary to pay the bills when presented was undoubtedly right; but as the expenditure was a proper one, as is shown by the statement of the district judge, and the expenditure was made *by the marshal in* good faith, your committee are of

opinion that the amount expended should be reimbursed; and they therefore report back the bill referred to them, with the recommendation that it do pass.

NEW ORLEANS, *November* 14, 1854.

United States Circuit Court,
Bought of P. Mallard and Co.,
No. 67 *Royal and* 80 *Bienville streets.*

121½ yards of ingrain carpet, at $1 per yard	$121 50
Making and laying down, at 12½ cents per yard	15 18
104 yards of bagging, at 23 cents per yard	23 92
1 drapery for the ceiling above the judge's seat	50 00
1 red worsted damask curtain, with cornice	18 00
55 yards of cocoa matting, at 50 cent per yard	27 50
Laying, at 5 cents per yard	2 75
	258 85

Received payment.

P. MALLARD.

NEW ORLEANS, *February* 27, 1856.

At the request of the United States marshal for this district, I have carefully examined the within bill of articles furnished, and labor performed, in the fitting up of the United States court-room in this city, and have no hesitation in certifying that the same were necessary for the object specified.

THEO. H. McCALEB,
United States Judge.

NOVEMBER 3, 1854.

J. M. Kennedy, Esq., United States Marshal,
To Wm. Low, Dr.

Taking down railing in former court-room	$1 00
Taking down blinds in former court-room	3 00
Getting safe up to marshal's office (iron)	10 00
Partition for coal house, lock, door, &c	19 75
Key for lock on paper box	50
Painting partition, two coats	5 00
Covering two tables in court-room	4 50
Covering two desks in court-room	4 00
Covering two portable desks in court-room	2 00
Varnishing and cleaning furniture in court-room	12 00
	$81 75

Brought forward.....	$61 75
Taking down, remounting, and repairing record cases in clerk's office, United States district court, including lumber and other materials.....	42 00
	103 75

Received payment.

WILLIAM LOW.

Approved:

R. M. LUSHER,
District Clerk, District Court.

NEW ORLEANS, *February* 25, 1856.

I hereby certify that the above stated repairs and labor were indispensably necessary for the proper accommodation of the United States court and the protection of its records, and that they were all made at the time stated above.

N. R. JENNINGS, *Clerk.*

NEW ORLEANS, *March* 15, 1856.

DEAR SIR: I learn, from a letter of the Secretary of the Interior to the marshal of the eastern district of Louisiana, J. M. Kennedy, esq., that the sum of $362 60, expended by the latter for carpets and other necessary articles for the room appropriated to the United States circuit and district courts, and also for necessary repairs made upon cases designed for the safe-keeping of the records, has been disallowed, upon the ground that under the act of Congress an estimate should first have been made of the cost. This can be no objection to the justice of the claim now made by the marshal. He has paid the money, and the vouchers show that he paid what was actually charged by those who furnished the carpets, &c., and made the repairs upon the cases.

The marshal has not complied strictly with the requisition of the law, under an impression, perhaps, that the expenditure was not incurred for what might strictly be denominated *furniture*, as that term is used in the act of Congress. But certainly a mistake of so trivial a character, from which no injury has been sustained by the government, should be treated with indulgence. The only question is, did the marshal, according to his vouchers, pay a fair and reasonable price? Upon this point no doubt has been expressed.

As the judge of the court I ratified the accounts of the marshal, after satisfying myself that the expenditures were actually necessary. In relation to the furniture of the court-room, I expressed the opinion before the carpets were furnished, that the old ones should be removed and replaced by better—the former being then much worn and torn; and in relation to the cases, I know that the repairs were made at the request of the clerk of the United States district court, and I am satisfied that his *request was highly proper*, inasmuch as the repairs were *really required for the proper preservation* of the judicial records.

I make this statement under the full conviction that the sum of $362 60 was properly expended by the marshal, and that it should, in justice, be refunded to him by the government.

I have the honor to be, very respectfully, your obedient servant,

THEO. H. McCALEB.

Hon. MILES TAYLOR.

DEPARTMENT OF THE INTERIOR,
Washington, March 5, 1856.

SIR: I have received from J. M. Kennedy, esq., marshal for the eastern district of Louisiana, two vouchers, which had been suspended by the First Comptroller of the Treasury, for the approval of this department—one in the name of the P. Mallard & Co., for carpets, &c., for court-rooms, amounting to $258 85; and the other in the name of William Low, amounting to $103 75, which latter was for repairs upon furniture, &c.—with the request that the same be approved, notwithstanding his failure to obtain the sanction of this department previous to making the expenditure.

These expenditures are clearly prohibited by the *proviso* to the second section of the act of the 26th of February, 1853, (vol. 10, Stats. at Large, page 165,) and it is not conceived how their approval now could be reconciled with a proper sense of official duty.

It is presumed that this provision of the statute was enacted to place expenditures of the character named within the control of this department; and if so, the practice of approving expenditures in cases similar to this once having obtained here, would, in my opinion, entirely defeat its object.

Permit me, in addition, to call your attention to my annual report of December 4, 1854, a copy of which is herewith enclosed, wherein my views are more fully expressed.

Should you desire to take any action in relation to these accounts, they will be sent you upon request.

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND, *Secretary*.

Hon. MILES TAYLOR,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
Washington, July 29, 1856.

SIR: In reply to your request of the 26th instant, I send you enclosed herewith a copy of the accounts for fitting up court-rooms at New Orleans, and which were presented to this department for its sanction by Mr. Kennedy, the marshal, in his letter of the 27th of February last.

These accounts were the subject of my letter addressed to yourself on the 5th of March last, and are supposed to comprise all the accounts referred to in your note.

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND, *Secretary*.

Hon. MILES TAYLOR, House of Representatives.

4TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 47.

JOHN M. GARDNER.

JANUARY 9, 1857.—Laid upon the table and ordered to be printed.

Mr. BRENTON, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of John M. Gardner, asking for the passage of a law to "compel the Commissioner of the General Land Office to issue to him a correct patent" for "the southeast quarter of section two, in township twenty-four north, of range nineteen east, in the district of lands subject to sale at Menasha, in the State of Wisconsin," which was entered by the petitioner on the 24th day of September, 1852, *by the location of military bounty-land warrant numbered* 665, *issued ander the act of September* 28, 1850, *to Charles K. Gardner, and by him assigned to the petitioner, report:*

It appears that the register and receiver of the land office at Menasha, regularly returned said warrant to the General Land Office as having been properly located by the assignee on the tract of land above described. And it further appears that, in pursuance of law, a patent in the usual form was issued to the petitioner on the 26th day of March, 1853, and, as your committee is informed, is now in the possession of the petitioner.

Your committee, therefore, believe that the patent already issued is amply sufficient in form and substance to convey to the petitioner, "his heirs, and assigns" a good and sufficient title in fee to the tract of land above described.

The committee would therefore advise the petitioner to be content with what he has, being clearly of the opinion that he is secured in his rights, and that no additional legislation is necessary.

The petitioner further represents, that on the 13th of November, 1855, he located warrant number 798 on "the southeast quarter of section twenty-nine, in township eighty-seven north, of range sixteen west, in the county of Grundy, and State of Iowa," and complains that he has not yet received his patent therefor.

The only remedy that your committee can recommend in this case is the proper exercise of patience, feeling satisfied that the patent will be issued in its regular order, and that the petitioner will be amply secured in all his legal and equitable rights.

The committee therefore ask to be discharged from the further consideration of the whole subject.

ı Congress, } HOUSE OF REPRESENTATIVES. { Report
·Session. } { No. 48.

JOSEPH JANNEY—HEIRS OF.

January 9, 1857.—Laid upon the table and ordered to be printed.

r. Taylor, from the Committee of Claims, made the following

REPORT.

Committee of Claims, to whom was referred the memorial of the irs of Joseph Janney, have had the same under consideration, and w report:

ıe memorialists claim indemnity from the United States for ɔco destroyed during the late war with Great Britain, while in in warehouses at Magruder's Ferry and at Benedict.

ıe case of the memorialists cannot be distinguished from the cases e representatives of Rinaldo Johnson and Ann E. Johnson, and Villiam G. Ridgeley and Rogers and Lansdale, heretofore re- ɔd on in considering Senate bills Nos. 255 and 278; and for the ɔns given in those reports your committee recommend that the ı of the memorialists be rejected.

The memorial of the heirs of Joseph Janney.

ıe Senate and House of Representatives of the United States:

ɔur petitioners respectfully represent that they claim indemnity . the United States for property destroyed during the late war Great Britain; that, on the breaking out of the war, they had ɜ quantities of tobacco in store at Magruder's warehouse, in ce George's county, Maryland, and Benedict warehouse, in ·les county; that the hogsheads of tobacco which were in the Not- ham warehouse were removed by the order of the commanding ɜr, and erected into a breastwork, with the view of giving pro- on to our troops; that the village was in imminent danger of g assailed by the enemy, hence the necessity for the defence of ɔlace; that this necessity was so obvious that nobody pretended ɜny it; and the commanding officer would have deserved a severe ke had he abstained from using the tobacco as a means of defence. exercise of this power in the present instance was under circum- ɔes of no ordinary occurrence. The unexpected advance of the

British troops upon the villages bordering on the Patuxent river in 1814 found this section of the Union wholly unprotected. In June, 1814, when the enemy ascended the Patuxent river, within twenty-eight miles of Washington city, there was not a breastwork, nor a fortification of any description—not a solitary cannon planted to sound an alarm, or check their progress to the Capitol of this Union. What was to be done? Under these trying circumstances, the commanding officer did not hesitate. He lost no time in strengthening his position and fortifying himself in the best manner time and circumstances would allow. If the necessity exist, then that case has arrived in which the government may take private property, or endanger its safety, for the public defence. The government did this. They did it through their officer, and the result was a loss to said heirs. Your petitioners pray that as the case of George Armstrong is in all respects the same with this, so far as the tobacco warehouses at Benedict and Magruder's are concerned, the said papers, affidavits, depositions, letters, and statements, &c., &c., be adopted as proofs in this case. It is well established by the depositions herewith filed that the tobacco, out of which our troops constructed a fortification, was destroyed and carried away by the British in consequence of its being used as a breastwork.—(See James Baden and Major Biscoe's affidavits.) It must be recollected by all who are conversant with the events of the late war, that during the year 1814, that Benedict was little else than a garrisoned village. Both the regular army and militia made it a place of rendezvous.—(See the history of debarkation of the British troops for Washington city in 1814. See Major Biscoe's statement, and the affidavits and testimony filed in the case of Neale.)

In relation to the destruction of the warehouse at Magruder's, in Prince George's county, Maryland, the foregoing remarks may be considered as applicable, to some extent, in explaining the views upon which the claim for indemnification is founded.

The fact is supported by unquestionable testimony that the warehouses were occupied by our troops as a shelter and protection. The occupation of buildings need not be a literal occupation even for a single night. If in the presence of an enemy, it amounted to the occupation which should entitle the owner of the property to full compensation. This position must be conceded. While thus occupied, if it is destroyed, so that occupancy was the cause of its destruction, the government is bound to grant compensation. The individual who owned the property suffered from a new character induced upon his property by the act of the government. The petitioners will further state that the despatches of Admiral Cockburn, in giving an account of his depredations on the Patuxent river, says that he burnt the warehouses, as he considered them military posts, thus bringing the case precisely within the principles as established by the legislation of Congress.

Extracts from Cockburn's despatches, June 22, 1814.—"He says that a detachment of sailors and marines were landed on both sides of the river, (Patuxent,) and the enemy's militia had assembled to the *number of three* to five hundred, retreating before them in the woods;

the *marines destroyed the tobacco stores* and several houses *which formed military posts.*" Again, he says: "That Captain Barrie advanced from Benedict to Marlborough, a schooner was found loaded with tobacco, after which they burnt tobacco stores containing two thousand four hundred hogsheads; the detachment re-embarked."

Your petitioners will now proceed to the investigation of the circumstances under which the tobacco stored in the warehouse at Benedict, Charles county, Maryland, was destroyed and carried away by the naval forces of Great Britain.

In June, 1814, the naval forces of Great Britain ascended the Patuxent river with a very considerable number of vessels of war. On the 15th of June they reached the village of Benedict. For the purpose of resisting the aggressive movements of the enemy, and to arrest their depredations, a portion of the troops of the United States had been stationed in Benedict. The commanding officer of the army finding the station a very exposed one, and without any fortification behind which his men could protect themselves in the event of a conflict with the enemy, and to oppose, if possible, their landing, he was compelled to resort to the only means available, to seize and remove the hogsheads of tobacco, then stored in the warehouse, for the purpose of erecting a breastwork. The order to roll the hogsheads of tobacco out of the warehouse and to construct a breastwork was given by an officer of the United States army. That a battery was constructed out of said tobacco.—(See Cusick's testimony.)

This was the conversion of private property into the public use, and would grow out of that state of necessity which is superior to all law, and flows from what the civilians called the eminent domain which belong to all governments, and is founded on the irresistible dictate and impulse of self-preservation. Every writer in treating of the rights of sovereignty says, that when a nation is at war, it has a right to avail itself of all its means.

The rule laid down in the laws of Congress is, that if the United States, in the prosecution of a war, occupy and use the property of a citizen for military purposes, so as to make it the legitimate object for capture and destruction, according to the rules of civilized warfare, and if, in consequence of such occupancy, the enemy be drawn upon, and do capture and destroy it, the owner shall be compensated out of the public treasury. This is manifestly right, and it is no more than simple justice, under the provision of the Constitution which prohibits the taking of private property for public use without just compensation.

As to the extent of the occupation of the village of Benedict by the British troops, it must be recollected by all who are conversant with the history of the late war, that the country bordering on the Patuxent river, during the year 1814, was little else than a great cantonment. The British troops held possession of this village during the whole summer and part of the fall of 1814. The regulars had been driven out of possession by the arrival of a superior naval force, and the property was destroyed by the enemy. It would be absurd to say that the government would not pay for its destruction, because our troops were *not in actual position* at the time of its destruction. Your

petitioners beg leave to state that the abandonment of the possession should be of such a character that the owner could take possession and enjoy all the rights to which he was entitled, otherwise the troops would be in constructive possession.

That the regulars were stationed in the village of Benedict is a fact, sustained by the affidavit of Austin Cusick, and by the letter of the late Hon. Clement Dorsey to General Philip Stuart, then commander of the militia forces in this section of the State. Your petitioners will remark, that the said Hon. Clement Dorsey was the aid-de-camp to General Philip Stuart.—(See Hon. Daniel Jenifer's statement.)

By a reference to Admiral Cockburn's despatches to Admiral Cochrane, the statement of Austin Cusick is fully sustained and corroborated. He says, "that on the 15th of June, 1814, the Narcissus arrived, and Captain Barrie determined to proceed up the river in twelve boats, having in them one hundred and eighty marines, and thirty of *the black colonial corps;* they proceeded to Benedict, where a party of regulars fled, leaving behind several muskets and a part of their camp equipage."

Again, by a reference to the Federal Republican, bearing date 24th June, 1814, which contains a diary of the operations of the enemy from the time Barney's flotilla entered the Patuxent, it will be found that Commodore Barrie, in a conversation with the honorable Clement Dorsey, stated that there were "military and artillery pieces" stationed in Benedict. This assertion on the part of the British commander is not controverted by Dorsey.—(See Clement Dorsey's conversation with the commander, and herewith filed.) The facts, as contained in the above-recited documents, go conclusively to the support of Cusick's testimony in relation to the companies of the United States being stationed in Benedict.

The most open village, if resolutely defended, will cost many men before its fall. The village of Benedict, being located in an open plain, and situated immediately on the banks of the Patuxent river, from its peculiar localities—surrounded by creeks and marshes, the frame buildings, so far as the working of artillery pieces, affording no shelter—could not have been maintained for one hour against a superior force. In the next place, an officer would have displayed a great want of military knowledge in the disposition either of artillery or infantry to have stationed there a military force for any effective purpose, much less have attempted to oppose the landing of the enemy's troops, without constructing some work of defence behind which his men could find protection from the firing of the enemy's vessels-of-war. The conclusion seems to be irresistible, from these facts and circumstances, that the situation of our troops absolutely required the erection of a fortification. That such an entrenchment was thrown up there can be no doubt, for it is expressly stated that the tobacco was rolled out of the warehouse and used as a fortification.—(See John L. Dorsey's affidavit.)

These are the material circumstances attending the destruction of the tobacco at the Benedict warehouse, and in the face of them can there be doubt as to the cause of the destruction? Was it not palpa*bly the use* made of this tobacco, its change from a pacific to a hostile

character? Your petitioner ascribes the destruction of the tobacco to its use and occupation by the regulars of the United States service, and the preparation by them to repel the invasion by the British forces.—(See Cusick's testimony.) There is no principle better established than this, that if property is destroyed by one of the incidents to the situation and employment of our troops in which it is placed the government is liable.

Was this tobacco in the Benedict warehouse destroyed and carried away by the British troops? In the affidavits of Zachariah Sothoron, John Moran, and Austin Cusick, bearing date March 11, 1824, and herewith filed, it is distinctly stated that the tobacco at the Benedict warehouse was destroyed and carried away by the enemy, in consequence of the use to which it was appropriated by our troops, when said forces landed in Benedict. The affiants say, "that there was considerable quantity—say four or five hundred hogsheads—of tobacco in said warehouse when said force landed." Again, these deponents say they saw the enemy "burning and otherwise destroying tobacco in the said town of Benedict; not more than thirty hogsheads remained in and about the warehouse."

Your petitioners will remark that the foregoing affidavit was found in the State Department, and filed in a case pending before the board of commissioners, which assembled in the city of Washington, to adjust and examine into the validity of claims under the first article of the treaty of Ghent. According to the interpretation imposed upon this article it was deemed unnecessary to show how and in what manner the property was destroyed—it was merely necessary to establish the fact that the property was deported by the naval power of Great Britain, and within the waters of the United States at the time of the ratifications of the treaty of peace. Hence the *omission* on the part of the affiants to state that the destruction or the carrying away of the tobacco was in consequence of its being used as a fortification for our troops; all that was required of the claimant was to show its destruction and deportation.

The conclusion that a portion of the army of the United States were stationed in Benedict, and that the tobacco was used as a fortification and destroyed and carried away by the British forces, perfectly harmonizes with all testimony filed by your petitioner. The testimony of the deponents strengthen and support each other in all the positions assumed by your memorialists as regards the destruction of the tobacco in the Benedict warehouse. The precedents in favor of the claim now presented are full and complete.—(See the reports of the Committee of Claims, House of Representatives, No. 132, 29th Congress, 1st session, and reference to the case of James Tongue and others. See 15th Congress, 1st session, No. 391, House reports; 15th Congress, 1st session, 420, House reports.)

Independently of the intrinsic merits of the claim of your memorialists, it is contended that the principle of indemnity has been recognized and established by the decision in the case of James F. Sothoron, passed at December session, 1848, which is, in all its circumstances, far short of the *present case*. In that case the principle is

laid down that personal property shall be paid for by the government whenever it is converted to public use.—(See note No. 2.)

In the view which that committee formed of this case from the evidence, there can be no doubt they considered all the *government responsibility* attaching as soon as the occupation commenced by the American troops, and its consequent destruction by the enemy.—(See note No. 3.)

That, in the great lapse of time, it is a difficult work to procure testimony connected with the events of the late war with Great Britain; that many persons who witnessed the scene of what was then called the "Chesapeake depredations" have died, and but few survive to give a full history of the occurrences of that day. It cannot be expected that these events should be sustained by the same definite and precise proof as that which may be required according to the strict principles of a legal proceeding; but that your honorable bodies will consider the special circumstances of the case, and grant compensation in conformity with the principles of equity and justice. The 5th section of the act of 1816 declares "that where any property, impressed or taken by public authority for the use or subsistence of the army during the late war, has been destroyed, lost, or consumed, the owner of such property shall be paid the value thereof." This section is general, and embraces every description of property. The precedents established and referred to in this memorial proves that Congress did not intend that the act of 1816 should form the boundary of relief; on the contrary, that it considered the special circumstances of each case, and grant indemnification in conformity with the principles of equity and expediency. There can be nothing in this section that sanctions, by the remotest implication, the doctrine that compensation should not be granted in all cases where property has been used for belligerent purposes and offensive operations.

The change of our amicable relations with a foreign power works a change in civil government, and destroys many of the securities by which we hold our property.

Your petitioners further state, that the evidence of this tobacco being stored in the warehouses at Magruder's and Benedict is fully established by the tobacco notes, which were given by the inspectors in obedience to the laws of Maryland, regulating the inspection and safe keeping of the tobacco. By the act of Maryland, passed in 1801, chapter 63, section 18, it is declared, that the inspector or inspectors, who shall pass any tobacco, shall deliver as many notes, under the hand of the inspector or inspectors, to the owner, and in his name, as shall be required; in which note or receipt shall be expressed the place and time of reception, the mark of the warehouse, the number, and the gross, tare and nett weights for all tobacco inspected and passed; and, also, in the note shall be expressed whether of the first or second quality—the first quality to consist of tobacco clear of and unmixed with trash; and the said notes shall be payable to the said owner or bearer, and shall be current and receivable in payment of all debts and contracts for tobacco, or judgments and decrees on contracts for tobacco, according to the terms and intention of the contract, judgment, or decree, (as the case may be,) and shall be transferable from one person to

another, and shall be paid, upon demand, by the inspector or inspectors who signed the same.—(See affidavit of Joseph Young.)

Section 26 provides a penalty for forging manifests or notes.

Section 39 declares that inspectors "are declared to be answerable to the owners of any notes mentioned and described in such manifest, so far as to produce the same hogshead or hogsheads of tobacco belonging to any owner."—(See Dorsey's Laws of Maryland, page 453, volume 1.)

Your memorialists further state that he had stored in the warehouses at Magruder's 27 hogsheads of tobacco, and 30 hogsheads in Benedict warehouse; all of which were totally destroyed and carried off by the British, for which they claim compensation.

Your memorialists pray such relief in the premises as may be fair and reasonable.

NOTE No. 1.—See Brigadier General Winder's letter to Major Biscoe and herewith filed; also, General Winder's letter bearing date 27th July, 1814, to the Secretary of War, in which he says that Colonel Bowen's regiment, 300 strong, and a detachment of regulars, under the command of Lieutenant Colonel Scott, were stationed at Nottingham. See Niles' Register, volume 7, page 283: also, Admiral Cockburn's official report to Admiral Cockrane, in which he gives a detailed account of his naval operations on the waters of the Patuxent. He says, "that on his approaching the town, (Nottingham,) a few shots were exchanged between the boats and some of the enemy's cavalry."

NOTE No. 2.—See Senate Report No. 129, 30th Congress, 1st session. House of Representatives Report 57. The report of the Senate states, "that it is difficult to draw a distinction, in equity, *between a claim for loss of buildings and for the personal property they contain.*"

NOTE No. 3.—See the case of John S. Stiles, adjudicated in the 27th Congress, 2d session. He claimed indemnity for vessels sunk for the defence of the city of Baltimore in 1814. The Judiciary Committee of the Senate say, "that it is the duty of the government to make compensation for them and the damages which their owners had sustained." An act passed for his relief, see volume 6 of United States Statutes at Large, page 126; also, the act for the relief of sundry citizens of Baltimore for the sinking of vessels at the mouth of the harbor of Baltimore.—(See volume 6 United States Statutes at Large, page 265.)

List of twenty-seven hogsheads of tobacco belonging to Joseph Janney, burned by the British naval forces from Magruder's warehouse.

M. M.	73	1,075—118	357
R. V. S.	91	1,090—108	982
R. V. S.	92	1,040—112	928
G. R.	67	1,033—123	910
B. D.	69	1,087—108	979
E. B.	59	1,002—121	881
H. R.	75	843—120	723
I. R.	28	1,075—100	975
P. E.	155	1,108—101	1,007
P. E.	50	1,256—118	1,138
P. E.	51	1,050—123	927
I. M.	227	1,075—104	971
I. H. G.	45	1,350—117	1,233
I. C.	14	1,224—121	1,103
I. P.	7	1,050— 83	967

F. G.	18	925—101	824
I. C.	38	1,006—118	888
R. B. C.	46	1,008—107	901
I. W.	102	1,077— 86	991
I. W.	97	935—113	822
S. A.	142	1,075—100	975
G. W.	32	971—122	849
R. B.	352	1,008—106	902
B. R.	9	1,152—125	1,027
I. B.	175	1,031—112	919
T. S.	75	1,068—109	959
T. S.	73	1,087— 99	988

STATE OF MARYLAND, *Prince George's county, sct.*

Personally appeared before me, a justice of the peace for the county aforesaid, James Baden, and made oath upon the Holy Evangely of Almighty God that the twenty-seven hogsheads tobacco, corresponding with the above list, were burnt in the warehouse on Patuxent river, called Magruder's warehouse, by the British naval forces, in the month of June, 1814. This deponent was inspector at the above warehouse at the time the above tobacco was burnt, and had the same under his care. Given under my hand this 21st day of July, 1828.

JOS. YOUNG.

MARYLAND, *Prince George's county, to wit*:

I hereby certify that Josias Young, esq., gentleman, before whom the within affidavit appears to have been made, and whose name is thereto subscribed, was at the time of taking and so doing, and still is, one of the State of Maryland's justices of the peace, in and for said county, duly commissioned and qualified, and to all whose acts, as such, full faith and credit is and ought to be given as well in courts of justice as thereout.

In testimony whereof I have hereto set my name and affixed my seal this twenty-first day of July, A. D. eighteen hundred and twenty-eight. [L. S.]

AQUILA BEALL,
Clerk of Prince George's County Court.

List of thirty hogsheads of tobacco, belonging to Joseph Janney, taken by the British naval forces from Benedict warehouse.

E. A.	73	1,161—110	1,051
Z. W.	*20*	1,023—114	909

	103	959—103	856
	279	1,008—100	908
.	268	991— 98	893
	66	1,132—110	1,022
	35	1,106— 97	1,009
	36	1,162— 96	1,066
.	59	1,025—110	915
.	38	1,252—100	1,152
/.	70	1,032—122	910
.	74	1,012— 87	925
).	114	1,085—102	983
I.	42	976— 87	889
K.	55	1,008—101	907
	354	1,016—105	911
'.	212	1,002—115	887
!.	75	983— 89	894
.	68	962—111	851
	83	1,121—121	1,000
. B.	316	1,034—105	929
. B.	320	1,054—109	945
'.	42	1,012—101	911
D.	54	1,012—100	912
D.	55	1,054— 98	956
D.	56	1,058—107	951
,.	104	1,102—114	988
.	34	1,016— 96	920
/.	13	1,044—114	930
'.	38	1,118— 83	1,035

ATE OF MARYLAND, *Prince George's county, sct.*

rsonally appeared before me, the subscriber, a justice of the peace he county aforesaid, Benjamin Wood, and made oath upon the Evangely of Almighty God that the thirty hogsheads tobacco, sponding with the above list, were taken from the warehouse on xent river, called Benedict warehouse, by the British naval forces ne month of June, 1814. This deponent was inspector at the e warehouse at the time the above tobacco was taken, and had ame under his care. Given under my hand this 21st day of July,

JAMES NAYLOR.

YLAND, *Prince George's county, sct.*

hereby certify that James Naylor, esquire, gentleman, before m the within *affidavit appears* to have been made, and whose *e is thereto subscribed,* was at the time of taking and so doing,

and still is, one of the State of Maryland's justices of the peace in and for said county, duly commissioned and qualified, and to all whose acts, as such, full faith and credit is and ought to be given, as well in courts of justice as thereout.

In testimony whereof I have hereto set my name and affixed the seal of my office this twenty-first day of July, A. D. eighteen hundred and twenty-eight. [L. S.]

AQUILA BEALL,
Clerk of Prince George's County Court.

ALEXANDRIA, *9th month 25th*, 1823.

The notes for the above tobacco are in my possession.

JOSEPH JANNEY.

DECEMBER 16, 1850.

The memorial of the heirs of Joseph Janney, late of the town of Alexandria, deceased, respectfully represents, that the above two manifests of tobacco constitute a true and correct list of the tobacco lost by him in the warehouses therein stated, by the depredations of the enemy during the progress of the war of 1812, between the United States and Great Britain. In explanation of the cause of the delay which has arisen in the presentation of this claim to your honorable body, your memorialists respectfully represent, that the claim was presented to the board of commissioners and by them rejected in June, 1828; consequently your memorialists abandoned all hopes of realizing any remuneration for it until Congress passed acts granting relief, under precisely similar cases, to Dr. James Tongue and James T. Sothoron; they therefore deem it right and proper to present their claim for indemnity, and humbly pray your honorable body to grant them like indemnity, and they will, as in duty bound, ever pray.

WM. B. SCOTT,
Attorney.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 49.

GENERAL ROBERT YOUNG—REPRESENTATIVES OF.

JANUARY 9, 1857.—Laid upon the table and ordered to be printed.

Mr. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom the memorial of William S. Young, J. R. Young, P. R. Fendall, and A. G. Brown, was referred, have had the same under consideration, and now report:

The memorialists claim indemnity from the United States for tobacco lost or destroyed during the late war with Great Britain, while in store in the warehouses at Magruder's Ferry.

The case of the memorialists cannot be distinguished from the case of the representatives of Rinaldo Johnson and Ann E. Johnson, heretofore reported on, in considering Senate bill No. 255; and, for the reasons given in that report, your committee recommend that the claim of the memorialists be rejected.

Your memorialists respectfully represent unto your honorable body that we are the legal representatives of the late Robert Young, of Alexandria, then in the District of Columbia. That he was a merchant, extensively engaged in purchasing tobacco in Maryland; and that he employed the late James Naylor, of Prince George's county, Maryland, as his agent for the purpose of buying tobacco. That in pursuance of such arrangement, the said Naylor did purchase large quantities of tobacco, which he stored in the warehouses at Magruder's Ferry, on the Patuxent river, Prince George's county, Maryland, all of which will more fully appear by reference to Captain James Baden's certificate, and the list of tobacco, as made out by the late James Naylor, and hereunto annexed. That the warehouses at Magruder's, being occupied by the Maryland militia, as a military post or depot, were burnt by the British troops on the 17th of June, 1814, together with all of the tobacco stored in said warehouses. This occupation was in pursuance of an order issued by Major Biscoe, then in command of the Maryland militia, (see General Biscoe's testimony;) that the destruction of these warehouses was in consequence of such occupancy by the Maryland troops. This fact is well *established by the testimony* of Captain Baden, then the

inspector of tobacco at Magruder's warehouses, as also General Biscoe, that the troops had not, at the time they were ordered to occupy the warehouses, any other available means of defence, and the detachment had no other shelter from the fire of the enemy than the warehouses. From this, it appears that the warehouses, for which compensation is now asked, were taken for public use, and while in the use and possession of the public were destroyed, entitling your memorialists, within the principle well established in the decision of similar claims, to a fair and reasonable compensation.—(See Report of 29th Congress, No. 132, House of Representatives, in the case of Matilda Drury.) The principles involved in this case are analogous to those which are set forth in the memorial of George Armstrong, and entitling your memorialists to a full indemnity for the loss of the tobacco, which was destroyed by the act of the government.

WILLIAM S. YOUNG,
J. R. YOUNG,
P. R. FENDALL,
A. G. BROWN.

IN THE HOUSE OF REPRESENTATIVES, *February* 9, 1842.

MR. JAMES W. WILLIAMS, from the Committtee of Claims, made the following report, to accompany bill H. R. No. 90.

The Committee of Claims, to whom were referred the petitions of James Tongue, John Scrivener, and the administrator of William Hodson, report:

That the evidence is clear and conclusive that the buildings of John Scrivener and William Hodson, and the tobacco warehouse of James Tongue, were taken possession of and occupied by military forces in the service of the United States during the last war, and in consequence of such occupation were destroyed by the enemy.

The value of the houses of the said James Tongue, John Scrivener, and William Hodson, is now in full proof before the committee. They beg leave to refer to a report submitted by the Committee of Claims, relative to the same petitions, on the 6th of July, 1838, which is appended hereto; and they present herewith a bill for the relief of the petitioners.

JULY 6, 1838.

The Committee of Claims, to whom were referred the petitions of James Tongue, John Scrivener, and the administrator of William Hodson, praying compensation for property destroyed by the enemy during the late war with Great Britain, have had the same under consideration, and report:

That the three cases being similar in their character, and sustained by the same evidence, the committee have thought it best to consider

them together in one report, instead of making a separate report in each case. These cases were before the committee at the second session of the last Congress, but on not being sustained by sufficient evidence, they were suffered to lie, in order to enable the claimants to adduce additional evidence.

As now presented by the evidence, they stand as follows: James Tongue claims the value of a tobacco warehouse destroyed by the British at Tracey's Landing; each of the other claimants claims the value of a dwelling house and out-houses, destroyed in like manner at Town Point.

It seems that Tracey's Landing is on a small creek, within a short distance of its mouth, in the Chesapeake bay, and Town Point is situated immediately at the mouth of said creek. During the spring of 1814 Commodore Barney, commanding the American flotilla in the Chesapeake, in order to lighten his vessel, deposited a considerable quantity of munitions of war in the tobacco warehouse at Tracey's Landing, belonging, as above stated, to the petitioner, James Tongue, and left a detachment of men to guard the same; that the said stores and munitions of war were gradually removed over land to the Patuxent, for the use of the flotilla—probably a small remnant remained at the time of the destruction of the said warehouse. In October, 1814, the British fleet, in considerable force, under Admiral Warren, appeared in the Chesapeake, in the neighborhood of Town Point and Tracey's Landing. A detachment of militia was ordered to take post at those two points, for the defence of the warehouse aforesaid, where a large quantity of tobacco was in store, and of the neighboring country. This detachment occupied the said warehouse, and the dwelling and out-houses of John Scrivener and William Hodson, at Town Point, for barracks. The position at Town Point was a strong one, and well calculated to effect the object for which it was occupied, (the creek at its mouth being but about fifty yards wide.) The governor of Maryland sent a cannon to the detachment there posted, for the purpose of aiding in the defence. The British boats at length entered the mouth of the creek, and were immediately fired upon by the detachment stationed at the point, the cannon aforesaid being fired from between the houses of Scrivener and Hodson, which were about sixty yards apart. Being much superior, however, in ordnance and numbers, they succeeded in dislodging the American militia from their position. They then proceeded up the creek to the warehouse of the petitioner, Tongue, at Tracey's Landing, where the portion of the detachment there stationed attempted to defend themselves by making a bulwark of the hogsheads of tobacco. But they were unsuccessful, and were compelled to evacuate their position. The British troops being in possession of the two posts, under these circumstances considered themselves justifiable, under the usages of war, in destroying the warehouse and the two dwelling houses, &c., occupied by the American troops as barracks, which they accordingly did, scrupulously abstaining from and studiously avoiding injuring any other property.

The foregoing facts are established by a mass of testimony of the most respectable character, although unfortunately the commanding

officer of the militia detachment and nearly every other commissioned officer are dead, and their evidence beyond the reach of the claimants. It may be necessary to add that the commander of the British forces justified the destruction of the buildings aforesaid, to Mr. J. A. Skinner, on the ground of their being occupied by the American troops.

The committee feel impelled therefore to the conclusion, that the claimants have brought themselves within the principle established in the decision of similar claims, and that they are entitled to relief. The reason of the claimants not having sooner applied for relief, as assigned by themselves, was that one Patterson, whose property was destroyed under similar circumstances, applied to Congress for relief soon after the war, and his petition was rejected—that he applied again a few years since, and obtained relief.

As to the value of the property destroyed, it is established by the appraisement, under oath, of John Collinson, William J. W. Compton, and Thomas C. Denny, who are proved satisfactorily to have been men of sound judgment and undoubted integrity, that the warehouse of the petitioner, J. Tongue, was worth $1,837 78. It is further established by the appraisement, under oath of James Tongue, Samuel Gover and John Collinson, equally respectable with the other witnesses, that the buildings destroyed, belonging to William Hodson, deceased, were worth $3,968 39.

The petitioner Scrivener states in his petition that the valuation of his property is among the original papers; but such valuation is not to be found, and there is no evidence to show the value of his buildings destroyed. While, therefore, the committee believe him entitled to relief to the amount of that valuation, they cannot report a bill in his favor, for want of evidence. They therefore leave his claim without prejudice to be hereafter reported upon.

They now report a bill for the relief of James Tongue and the representatives of William Hodson.

NOTTINGHAM, *August* 18, 1814.

SIR: As soon as you may find yourself justified in discharging the militia, you will oblige me by directing the sergeant and his party of the regulars, with the 18-pounder, to proceed to Upper Marlboro', and await orders.

WM. H. WINDER,
Brigadier General, &c.

Major WASHINGTON BISCOE.

The above order, in the handwriting of General Winder, is filed with the committee in the case of George Armstrong.

FLOTILLA, *July* 8, 1814.

MY DEAR GENERAL: I have thought proper to send forward the *information I* received from Major Biscoe, and to point out the ne-

cessity of having some troops stationed here to act with the flotilla, at the same time to inform the government of the impropriety of drawing the militia from this vicinity across the river for the defence of Calvert, &c. I will thank you to have the despatch forwarded by some trusty person, and I am yours, &c.

JOSHUA BARNEY.

The above letter was written at the time when the United States flotilla, commanded by Commodore Joshua Barney, were at anchor at the port of Nottingham, in Prince George's county, Maryland.

G. W. BISCOE.

February 20, 1850.

The original of which the above is a copy is in the handwriting of Commodore Barney, and is filed with the Committee of Claims in the case of Armstrong.

THE MEMORIAL OF GEORGE ARMSTRONG, OF OHIO.

To the Senate and House of Representatives of the United States:

Your petitioner respectfully represents unto your honorable body that he claims indemnity from the United States for property destroyed during the late war with Great Britain. That, on the breaking out of the war, he was engaged extensively in mercantile pursuits in Nottingham, Prince George's county, Maryland, and had large quantities of tobacco in store in the public warehouse at that place; that the hogsheads of tobacco which were stored for safe keeping, but contrary to his wishes, were removed by the order of the commanding officer, and erected into a breastwork, with the view of giving protection to our troops; that the village was in imminent danger of being assailed by the enemy, hence the necessity for the defence of the place; that this necessity was so obvious that nobody pretended to deny it; and the commanding officer would have deserved a severe rebuke had he abstained from using the tobacco as a means of defence. He had certainly as much right to take the tobacco as to take wagons and horses requisite for military operations. True there was no written law to justify it; but it would have been justified by that great principle of society which requires a surrender of a part to preserve the whole. There are situations in which an individual may be in which it would be treason to his country to withhold the application of any power he might possess necessary to command within his reach either to avert great national calamities or to secure to his country important national blessings. The exercise of this power in the present instance was under circumstances of no ordinary occurrence. The unexpected advance of the British troops upon the villages bordering on the Patuxent river in 1814 found this section of the Union wholly unprotected. In June, 1814, when the enemy ascended the Patuxent river within twenty-eight miles of Washington city, there was not a breastwork,

nor a fortification of any description; not a solitary cannon planted, to sound an alarm or check their progress to the Capitol of this Union. What was to be done? Under these trying circumstances the commanding officer did not hesitate. He lost no time in strengthening his position and fortifying himself in the best manner time and circumstances would allow. If the necessity exist, then that case has arrived in which the government may take private property, or endanger its safety, for the public defence. The government did this. They did it through their officer, and the result has been a loss to your memorialist. The exercise of this power springs from the necessity of the case, and has for its object and limitation the public safety. It is justifiable whenever the public safety requires it—whenever the property seized, and the use to which it is put, are adapted to that purpose which the dangers of the country call for. Then an officer is not only excusable, but is praiseworthy, if he occupies property for public use. If by *any act* of the government property, which otherwise would have remained in a state of safety, is withdrawn from its pacific character, under which it was not liable to injury by an enemy, and invested with a warlike character, a character which exposes it as an object of hostility, the government is bound to indemnify the owner for any damage it may sustain in consequence of such change of character.

The tobacco which was rolled out of the warehouses at Nottingham by the order of the commanding officer was a conversion of private property into the public use; and it is well established, by the depositions herewith filed, that the tobacco out of which our troops constructed a fortification was destroyed and carried away by the British, in consequence of its being used as a breastwork. It must be recollected by all who are conversant with the events of the late war, that during the year of 1814 Nottingham was little else than a garrison village. Both the regular army and militia made it the place of rendezvous.—(See Commodore Barney's letter to General Bowie. See note No. 1, p. 4.)

Your memorialist deems it proper to account for the cause the warehouse at Nottingham was not burned, together with a house adjoining thereto, the armory in which the arms of the militia were constantly kept. Its exemption from conflagration was owing to its immediate proximity to the village, which would have involved the entire village in flames and inevitable destruction.—(See Major Biscoe's statement.)

In relation to the destruction of the warehouse at Magruder's, in Prince George's county, Maryland, the foregoing remarks may be considered as applicable to some extent in explaining the views upon which the claim for indemnification is founded.

The fact is supported by unquestionable testimony that the warehouses were occupied by our troops as a shelter and protection. The occupation of buildings need not be a literal occupation, even for a single night, if in the presence of the enemy, amounted to the occupation which should entitle the owner of the property to full compensation. This position must be conceded.—(See William H. Crawford's letter.) But what is occupation? There is surely a legal occupation *by the* government so long as it is out of the power of the owner to

occupy the premises himself. This was the doctrine as applied to the concerns of individuals, and the same is applied to the government. While thus occupied it is destroyed legitimately by the government, so that occupancy was the cause of its destruction. The government is bound to grant compensation. The individual who owned the property suffered from a new character induced upon his property by the act of the government. The petitioner will further state that the despatches of Admiral Cockburn, in giving an account of his depredations on the Patuxent river, says that he burnt the warehouses, as he considered them military posts, thus bringing the case precisely within the principles as established by precedents and the reports of the Committee on Claims.

Extracts from Cockburn's despatches, June 22, 1814.—"He says that a detachment of sailors and marines were landed on both sides of the river, (Patuxent,) and the enemy's militia had assembled to the number of three to five hundred, retreating before them in the woods, the *marines destroyed the tobacco stores* and several houses *which formed military posts.*" Again: He says "that Captain Barrie advanced from Benedict to Marlborough, and a schooner was found loaded with tobacco; after which they burnt tobacco stores, containing two thousand four hundred hogsheads; the detachment re-embarked."

The ninth section of the act of 1816 it is necessary to prove by the best evidence which the case admits. It extends to cases of destruction of property by the enemy which are justifiable by the laws of civilized warfare.

1. That the warehouses were occupied under the authority of an officer or agent of the United States as a military defence or by an armed force.

2. That such occupation was the cause of its destruction.—(See William H. Crawford's letter, October 21, 1816, American State Papers, page 691, vol. on claims.)

The principles governing cases of this description have been so long adhered to that a train of decisions have been established, from which the committee will not depart. It has been usual for this nation to indemnify citizens for the loss of buildings while in the military occupation of our troops. The reason of the rule is that the possession by a military force imparts to the buildings the character of *public property*, and it thereby becomes the legitimate object of destruction, agreeably to the rules of civilized warfare.

It appears, from the depositions, that the troops took possession of the tobacco at Nottingham, and converted it to the public use; that it was destroyed and carried away by the British marines in consequence of such use; that the warehouses at Magruder's Ferry were in the possession of the troops of the United States at the time of their destruction, and occupied by order of the commanding officer as a barracks for military forces of the United States.

The petitioner further states that the loss of the tobacco, which he sustained, is fully proved by the production of the tobacco notes, which were issued by the inspector of the several warehouses. The precedents in favor of the claim now presented are full and complete.—(See the reports of the Committee of Claims, House of Representatives, No.

132, 29th Congress, 1st session, and reference to the case of James Tongue and others. See 15th Congress, 1st session, No. 391 House reports ; 15th Congress, 1st session, 420, House reports.)

Independently of the intrinsic merits of the claim of your memorialist, it is contended that the principle of indemnity has been recognized and established by the decision in the case of James F. Sothoron, passed at December session 1848, which is, in all its circumstances, far short of the present case. In that case the principle is laid down that personal property shall be paid for by the government whenever it is converted to public use.—(See note No. 2.)

In the view which that committee formed of this case from the evidence, there can be no doubt they considered all the *public responsibility* attaching as soon as the occupation commenced by the American troops, and its consequent destruction by the enemy.—(See note No. 3.)

In the above cases it is established as a well settled and indisputable principle that it is the duty of the government to make just compensation to the citizens where property has been taken for public use by competent authority.

Your petitioner further states, that when this claim was reported on adversely in 1836, that he failed to produce proof to show that the tobacco destroyed and carried off by the British was in the possession of the troops of the United States, or other agents; but since the presentation of said petition, and the adjudication of the committee, he has been enabled to establish the fact that the act of taking and carrying away the said tobacco was in consequence of using it as a fortification by the detachment of troops, as referred to in the affidavits of Captain Baden and General Biscoe.

Your petitioner further states that he has been induced to apply to the Congress of the United States for compensation for the destruction of his property, as herewith exhibited by the inspector's notes, in consequence of the legislation of Congress for the last few years, and finding that analagous claims have been granted. That in the great lapse of time, it is a difficult work to procure testimony connected with the events of the late war with Great Britain ; that many persons who witnessed the scene of what was then called the "Chesapeake depredations" have died, and but few survive to give a full history of the occurrences of that day.

Your petitioner further states, that the evidence of his tobacco being stored in the warehouse at Nottingham and at Magruder's is fully established by the production of the tobacco notes, which were given by the inspectors in obedience to the laws of Maryland regulating the inspection and safe keeping of the tobacco. By the act of Maryland, passed in 1801, ch. 63, section 18, it is declared that the inspector or inspectors, who shall pass any tobacco, shall deliver as many notes under the hand of the inspector or inspectors to the owner and in his name, or shall be required, in which note or receipt shall be expressed the place and time of reception, the mark of the warehouse, the number, and the gross, tare and nett weights for all tobacco inspected and passed; and also in the notes shall be expressed whether of the first or second quality, the first quality to consist of tobacco *clear of and* unmixed with trash ; and the said notes shall be payable

to the said owner or bearer, and shall be current and receivable in payment of all debts and contracts for tobacco, or judgments and decrees on contracts for tobacco, according to the terms and intention of the contract, judgment or decree, (as the case may be,) and shall be *transferable* from one person to another, and shall be paid, upon demand, by the inspector or inspectors who signed the same.

Sec. 26 provides a penalty for forging manifests or notes.

Sec. 39 declares that inspectors "are declared to be answerable to the owners of any notes mentioned and described in such manifest so far as to produce the same hogshead or hogsheads of tobacco belonging to any owner."—(See Dorsey, Laws of Maryland, page 453, vol. 1.)

Your memorialist further states, that he had stored in the warehouses at Magruder's 26 hogsheads of tobacco, and 44 hogsheads at the Nottingham warehouse, all of which were totally destroyed and carried of by the British, for which he claims compensation.

Your memorialist prays such relief in the premises as may be fair and reasonable.

NOTE No. 1.—See Brigadier General Winder's letter to Major Biscoe, and herewith filed; also, General Winder's letter bearing date 27th July, 1814, to the Secretary of War, in which he says that Colonel Bowen's regiment, 300 strong, and a detachment of regulars under the command of Lieut. Col. Scott, were stationed at Nottingham. See Niles' Register, vol. 7, page 283; also Admiral Cockburn's official report to Admiral Cockrane, in which he gives a detailed account of his naval operations on the waters of the Patuxent. He says, "that on his approaching the town (Nottingham) a few shots were exchanged between the boats and some of the enemy's cavalry."

NOTE No. 2.—See Senate Report No. 129, 30th Congress, 1st session. House of Representatives report 57. The report of the Senate states, "that it is difficult to draw a distinction, in equity, *between a claim for loss of buildings and for the personal property they contain.*"

NOTE No. 3.—See the case of John S. Stiles, adjudicated in the 27th Congress, 2d session. He claimed indemnity for vessels sunk for the defence of the city of Baltimore in 1814. The Judiciary Committee of the Senate say, "that it is the duty of the government to make compensation for them and the damages which their owners had sustained." An act passed for his relief—see vol. 6 of United States Statutes at Large, page 126; also, the act for the relief of sundry citizens of Baltimore for the sinking of vessels at the mouth of the harbor of Baltimore. See vol. 6 United States Statutes at Large, page 265.

Statement of James Baden.

That Robert Young of Alexandria was a merchant who dealt largely in Maryland tobacco; that the late James Naylor, of Prince George's county, Maryland, was his regularly constituted agent to purchase tobacco; that the tobacco so purchased and so listed by the said Naylor, and hereunto annexed, is in the handwriting of the late James Naylor; that witness was well acquainted with the handwriting of the late James Naylor, and that the statement of the amount of the tobacco which he, the said Naylor, purchased for the late Robert Young, and delivered on the 15th of December, 1813, is in the handwriting of the late James Naylor; and that the tobacco so purchased and listed was stored in the warehouse at Magruder's, where it was burned

and destroyed by the British troops in 1814; and that said tobacco never was shipped by the said Young or Naylor; that he was appointed inspector in the spring of 1813, and was the inspector at Magruder's warehouse when it was destroyed, and for some time thereafter; that the inspection books were destroyed in the general conflagration. James Naylor was my predecessor in office and considered a great judge of tobacco, and I know full well that he purchased large quantities of tobacco for Robert Young, of Alexandria, in 1813, whilst I was inspector; many of these purchases were made in my presence. Mr. James Naylor is dead; he resided in the neighborhood of the warehouses at Magruder's, on the Patuxent river.

—

Personally appeared before me, a justice of the peace in and for Prince George's county, and State of Maryland, James Baden of said county and State, and makes oath on the Holy Evangely of Almighty God that the subjoined statement is true and correct, to the best of his knowledge and belief.

Sworn before THO. M. D. BADEN, *J. P.*

FEBRUARY 15, 1850.

—

James Naylor bought for Mr. Robert Young the following tobacco, viz:

I C, No. 43, 1,094 net, at 2 cents	$21 88
Cask	1 00
I R, No. 26, 1,000 net, at 2½ cents	25 00
Cask	1 00
B L, No. 106, 904 B L, No. 107, 865 } net, at 4½ cents	71 76
Cask	1 00
I W, No. 108, 859 net, at 4 cents	34 36
R B, No. 110, 958 net, at 4 cents	38 32
Cask	1 00
I T W, No. 133, 865 I T W, No. 134, 955 } net, at 4½ cents	81 90
Cask	1 00
I T W, No. 52, 1,010 net, at 2½ cents	25 25
Cask	1 00
I B R, No. 135, 1,067 net, at 4½ cents	48 01½
Cask	1 00
B S W, No. 122, 1,019 B S W, No. 123, 1,021 B S W, No. 124, 961 B S W, No. 125, 997 B S W, No. 126, 1,030 } net, at 4½ cents	235 26

Casks		$5 00
B S W, No. 50, 1,102 net, at 2½ cents		27 56
Cask		1 00
I C, No. 129, 988 net, at 4½ cents		44 46
Cask		1 00
I H, No. 137, 852 I H, No. 138, 962 I H, No. 139, 1,024 } net, at 4½ cents		127 71
Casks		2 00
I H, No. 54, 959 net, at 2½ cents		23 97½
Cask		1 00
I N, 955 net, at 5 cents		47 80
Cask		1 00
I N, 976 net, at 3 cents		29 25
Cask		1 00
		902 50
Commission		21 00
		923 50
B L, No. 106, 904 B L, No. 107, 865 I W, No. 108, 859 R B, No. 110, 958 } 3,586 net, at 4 cents	$143 44	
2 casks	2 00	
		$145 44
I T W, No. 133, 865 I T W, No. 134, 955 I B R, No. 135, 1,067 B S W, No. 122, 1,019 B S W, No. 123, 1,021 B S W, No. 124, 961 B S W, No. 125, 997 B S W, No. 126, 1,030 I C, No. 129, 988 I H, No. 137, 852 I H, No. 138, 962 I H, No. 139, 1,024 } 11,741 net, at 4½ cents	528 34½	
10 casks	10 00	
		538 34½
I N, No. 136, 956 net, at 5 cents	47 80	
Cask	1 00	
		48 80
I N, No. 53, 975 net, at 3 cents	29 25	
Cask	1 00	
		30 25
I C, No. 43, 1,094 net, at 2 cents	21 88	
Cask	1 00	
		22 88

I R, No. 26, 1,000 I T W, No. 52, 1,010 B S W, No. 50, 1,102 I H, No. 54, 959	4,071 net, at 2½ cents..	$101 77½	
4 casks		4 00	
			$105 77½
			891 49
Commission			21 00
			912 49

Bought for Robert Young, and delivered on 15th December, 1813, and received of him five hundred dollars, which he has now my receipt for, which I ought to have, and four hundred and eleven dollars thirty-five cents on the delivery of the tobacco, leaves a balance due me of one dollar and fourteen cents.

JAS. NAYLOR.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 50.

CHRISTOPHER NEALE.

JANUARY 9, 1857.—Laid upon the table and ordered to be printed.

Mr. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of Christopher Neale, assignee of Jerome and Gerrard Plummer, both merchants of Alexandria, Va., with the accompanying papers, have had the same under consideration, and now report:

The memorialist states that he claims, as assignee of Jerome and Gerrard Plummer, "indemnity from the United States for property destroyed during the late war with Great Britain," consisting of large quantities of tobacco in store in warehouses at Nottingham, Magruder's Ferry, Tracey's Landing, and at Benedict.

The circumstances attendant upon the loss or destruction of the tobacco in question, as related by the memorialist, and the evidence submitted with a view to establish their existence, are precisely the same with the circumstances set forth and the evidence produced with respect to the claims of the representatives of Rinaldo Johnson and Ann E. Johnson, and of William G. Ridgely and Hodges & Lansdale, heretofore reported on; and as the claim of Neale is in no respect distinguishable from those referred to, your committee, for the reasons given in their report upon Senate bill No. 255, for the relief of the representatives of Rinaldo Johnson and Ann E. Johnson, and their report on Senate bill No. 278, for the relief of William G. Ridgely and Hodges & Lansdale, which reports they desire may be taken as a part of this report, now recommend that the claim of the memorialist be rejected.

CITY OF WASHINGTON.

Be it remembered that on this twenty-fifth day of March, eighteen hundred and thirty-six, personally appeared before the subscriber, a justice of the peace, Virgil Maxcy, and, being duly sworn, deposed and said: That during the period of the late war he resided about six miles from Tracey's Landing; that he knows that the British during the late war burnt down the tobacco inspection warehouse at that place, together with the *tobacco therein deposited*, and that he believes they burnt them *for the* reasons stated in the memorial of

Dr. James Tongue, which he has carefully read, and believes to be true in all its statements; that this deponent is well acquainted with the inhabitants generally in the neighborhood of Tracey's Landing, and particularly with John Collins, William J. W. Compton, and Thomas O. Denny; that they are intelligent men, of high respectability and integrity, and that he should have implicit confidence in their statements. This deponent further saith, that the militia that were called out for the defence of the neighborhood at the time the inspection warehouse was burnt by the British at Tracey's Landing were two companies: of one of which Jacob Franklin was captain, Thomas Sullivan was lieutenant, and William Wiem ensign; and of the other, William S. Tillard was captain, Thomas Tongue, jr., lieutenant, and John H. Tillard ensign—all of whom are now dead. And further the deponent saith not.

Sworn before— RICHARD T. BRISCOE.

STATE OF MARYLAND, *Anne Arundel county.*

Personally appeared before the subscriber, a justice of the peace for the county and State aforesaid, Samuel Gover, who, being sworn on the Holy Evangely of Almighty God, doth depose and declare: That he acted as commissary to the Maryland militia, who were called out to defend that part of the shores of the Chesapeake bay from Fishing creek to Tracey's Landing during the year 1814; doth depose and declare that Commodore Barney took possession of the large tobacco inspection warehouse located at Tracey's Landing some time in the spring of 1814, and kept possession of the same until some time in the summer of the same year; and that the said tobacco inspection warehouse was used as a place of depot for the stores belonging to the United States flotilla, consisting of provisions, ammunition, spare sails, and other munitions of war, which were carried by land to Patuxent river, where said flotilla lay a considerable time, over which said stores and munitions of war a detachment of men and some officers were placed; and the said deponent further states and says, that a few days before the British burned down the said inspection warehouse, and, while the British were lying off in the Chesapeake bay, the militia, under the command of Captain Jacob Franklin, (the same officer, now dead,) *rolled out a quantity of tobacco from the said tobacco inspection warehouse, and made a breastwork or fortification by standing the hogsheads of tobacco endwise*, as a protection for the militia to fight under. The deponent doth further state, on oath, that a few days after this, the British landed from their ships and took possession of the said tobacco inspection warehouse at Tracey's Landing, burned and destroyed the same, together with all the fixtures there belonging, and together with a quantity of tobacco.

Sworn before GASSAWAY WINTERSON.

MARCH 18, 1836.

STATE OF MARYLAND, *Anne Arundel county, ss:*

Personally appeared before me, the subscriber, a justice of the peace for the county and State aforesaid, Doctor Walter Wyvill, who, being duly sworn on the Holy Evangely of Almighty God, deposes and says: That he acted during the late war as sergeant in Captain Thomas T. Simmond's company, which belonged to the 2d regiment of Maryland militia; and that this company, with several other companies, were ordered out by the governor of Maryland to repel and keep off the enemy; and that more effectually to prevent the invasion of the British, many of the officers of the 2d regiment of Maryland militia selected a committee to wait on Governor Winder to let them have some pieces of cannon for the defence of Tracey's Landing warehouse, in which were deposited several hundred hogsheads of tobacco, belonging to the tobacco planters, as it was believed this property was in danger of being destroyed by the British, as Commodore Barney used the said tobacco warehouse as a depot for some of the military stores and munitions of war belonging to the United States flotilla. This deponent deposes and says, he was one of the committee who did wait on the governor of Maryland, and the governor did send to said regiment a piece of artillery with a good supply of ammunition, which said artillery was placed at Town Point, or the narrows of or mouth of the creek leading to Tracy's Landing, and for the defence of Tracey's Landing. This deponent further states that the tobacco inspection warehouse at Tracey's Landing, and at houses situated at Town Point, or the narrows at the mouth of the creek leading to Tracey's Landing, were used as places of rendezvous for the militia; and that these houses were occupied and used as barracks by the militia; that they received their rations there, ate there, slept there, deposited their arms, ammunition and other military stores there, did military duty there day by day, and week after week, for a considerable time, and until they were driven from there by the superior force of the enemy. This deponent further deposes and says, that the houses at Town Point, or narrows, at the mouth of the creek leading to Tracey's Landing, consisted of a new dwelling-house, storehouse, and windmill, and out-houses, belonging to William, now deceased, and a dwelling-house and out-houses belonging to John Scrivener; all of which houses, together with the inspection warehouse, with a considerable quantity of tobacco in it, were all burned by the British in the month of October, 1814—he does not now recollect the precise day of the month, but to the best of his knowledge, thinks it was about the middle of October. Your deponent verily believes all the above named houses were burned by the British in consequence of their being used as barracks and military stations, and as places of rendezvous and a depot for arms, ammunition, military stores, &c., &c.

Sworn before

LEWIS SUTTON, Sr.

DECEMBER 6, 1837.

STATE OF MARYLAND, *Anne Arundel county, ss:*

On the 16th of April, personally appeared before me, the subscriber, a justice of the peace for the State and county aforesaid, Captain Samuel Jones, who made oath upon the Holy Evangely of Almighty God that he resided, during the late war, near Tracey's Landing, and thatt he acted as commissary to furnish provisions &c., for the militia in the neighborhood of Tracey's Landing, whenever they were called out in defence of the State; and that he is well acquainted with all the occurrences of the late war that took place in the neighborhood of Tracey's Landing tobacco inspection warehouse. That the militia companies, commanded by Captain Thomas Simmons and Captain William S. Tollard, (both since dead,) rendezvousing, as circumstances required, at the mouth of the creek leading from the Chesapeake bay to Tracey's Landing tobacco inspection warehouse, fixed a piece of cannon at the mouth or narrows of the aforesaid creek, (the channel of said creek, at the mouth, is about fifty yards wide,) for the defence of Tracey's Landing warehouse and the tobacco contained in it, and also for the defence of the neighborhood generally; and this deponent says, there were situated at the mouth of the aforesaid creek, near to each other, two dwelling-houses, and other houses and a wind-mill.

This deponent further states, that the day on which the British took possession of Tracey's Landing tobacco inspection warehouse, they had to go in their barges through the mouth or narrows of the aforesaid creek; that as soon as the militia saw the British barges, which being numerous, and well armed with cannon and other arms, they soon compelled the militia to retreat. The British then landed, spiked the cannon that belonged to the militia, took possession of all the houses at the mouth of the aforesaid creek, and burnt them down. Your deponent believes that all the above-described houses were burnt because the said houses were used by the militia; and also because of their being fired on from the piece of cannon which was substituted between the two above mentioned dwelling-houses, and near to both of them.

Sworn before

GASSAWAY WINTERSON.

Extracts of Patrick H. O'Reilly's deposition.

DEAR SIR: I received your letter asking a statement, according to my recollection, of the occurrences which took place during the late war in relation to Tracy's Landing and Town Point, at the mouth of Tracy's creek. I cheerfully do so; most of these facts, and probably all the important ones, being yet fresh in my recollection; the farm *I then* owned and resided at being in the immediate neighborhood of *these places.* I belonged to Captain William Tillard's militia com-

pany, as well as yourself, as a private, sometimes as a sergeant, and doing also the duty of assistant adjutant to Colonel Samuel Watkins, at the requisition of that officer. The companies of Captains Tillard, Franklin, and Gammon constituted the effective militia force in that immediate neighborhood.

On the appearance of the enemy's fleet in the neighboring part of the bay, these companies were ordered out by their officers to repel any attempt the enemy might make to land and commit depredations, and was more or less in active service at such points in the neighborhood as the movements of the ships offered to threaten, from the time of the arrival of Admiral Warren in the neighboring waters in 1813 till the close of the war. In the spring or summer of 1814 Town Point was selected by the officers of the regiment as the most advantageous position for the protection of the greatest extent of country and of the tobacco warehouse at Tracy's landing, which was the depository of large property of the neighbors and of military stores of the United States, belonging to Commodore Barney's flotilla; and also affording a facility for the co-operation of the swamp company of militia to repel any attempted act of hostility against the surrounding country, or for the destruction of the public store, which we proudly thought had been confided to our protection by Commodore Barney. The impression on my mind is, that the officers of the militia had received orders from Governor Winder to call out the militia whenever appearances should indicate danger, without previously sending to Annapolis or the superior officer of the regiment, who resided at a distance, which would have enabled the enemy to land and commit extensive depredations before any resistance could be procured, if recourse must be previously had to them for authority, or to the executive at Annapolis. As sergeant of the company, I received orders from Captain Tillard to assist the others in convening the company when their presence in the field was deemed necessary, and did assist personally in throwing up the entrenchment at Town Point, and mounting the cannon there, which Governor Winder had sent us, and was, with others, instructed in the use and exercise of it by a gentleman who had been in the United States service. This entrenchment was made between the dwelling-houses belonging to John Scrivener and William Hodson, which were *used by the militia as barracks, or the warehouse* at Tracey's also, when occasion required. It was at these places that they rendezvoused, ate, slept, and received their rations, when circumstances appeared especially to require their presence.

By the orders of Captain Franklin, whose company resided nearest to Tracey's landing, a number of the hogsheads of tobacco in the warehouse were rolled out and arranged and disposed of in such order as to constitute a fortification and defence for the militia, or such portion of it as it might be best to employ at that point. The hogsheads were arranged in *ranks and positions adjoining the warehouse*, and extending from it to such distances and in such shapes as were thought most conducive to the purposes and uses intended and contemplated.

A portion of the militia were in possession and actual occupancy of the houses at Town Point, also of the warehouse at Tracey's, when the

British approached. There were only the militia at Town Point with cannon there mounted, and with musketry, the station gallantly maintained, until an overwhelming force landing, and advancing under the brisk cannonade from a number of barges, compelled them to retire. Those stationed at Tracey's then withdrew.

Your obedient servant,

P. H. O'REILLY.

—

CALVERT COUNTY, *to wit:*

Personally appeared before me, a justice of the peace of the State of Maryland, in and for Calvert county, Patrick H. O'Reilly, and made oath on the Holy Evangely of Almighty God that the facts stated in the foregoing communication are just and true.

JOHN B. JOY.

JULY 14, 1840.

STATE OF MARYLAND, *Anne Arundel county, ss:*

Personally appeared before me, the subscriber, one of the justices of the peace for the county and State aforesaid, John Collinson, who, being duly sworn upon the Holy Evangely of Almighty God, doth depose and declare, that in the spring of 1814 Commodore Barney, Barney, then commanding the United States flotilla, was at his house looking at a convenient situation where he could land and deposit a part of the stores and munitions of war belonging to the said United States flotilla, and that the said Commodore Barney took possession of the large tobacco inspection warehouse, located at Tracey's Landing in the spring of 1814, and kept possession of the same until some time in the same year as a place of deposit for stores and munitions of war for the United States flotilla, over which a detachment of men and a few officers were kept, and that the said stores were transported to Patuxent river while said flotilla lay there; that the said deponent doth further state, on oath, that a short time before the British burned down the tobacco inspection warehouse, while the British were lying in the Chesapeake bay in their ships, the militia were called out, acting under the command of Captain Jacob Franklin, (the senior officer, now dead,) took a number of hogsheads of tobacco from the warehouse aforesaid, and made a breastwork or fortification of the same by standing the hogsheads of tobacco up endwise, as a protection for the militia to fight under; and the said deponent doth further state, on oath, that a few days after this the British landed and took possession of the said tobacco inspection warehouse, burned and destroyed the same, together with all the fixtures thereto belonging, and a quantity of Maryland tobacco.

Sworn before

GASSAWAY WINTERSON.

MARCH 18, 1836.

STATE OF MARYLAND, }
Anne Arundel county, } *ss:*

On this 10th February, 1837, personally appeared before me, the subscriber, a justice of the peace for the county and State aforesaid, Captain Benjamin McCeney, who, being duly sworn on the Holy Evangely of Almighty God, says that he served as captain of a military company, during the late war, in the second regiment of Maryland militia. This deponent says that he received his orders from the then governor of Maryland to order out his command.

Your deponent further states, that in October, 1814, a British force of several ships anchored in the Chesapeake bay, and he thinks as near to Tracey's Landing and Town Point as they could; and that the militia were called by order of the governor of Maryland; and that some of the militia companies were stationed at Tracey's Landing, and some were stationed at Town Point; and that the houses at these places were used and occupied by the militia as places of rendezvous, and for deposit of arms, ammunition, stores, &c., &c., until they were driven from these places by the superior force of the enemy; that the militia then took possession of other houses in the neighborhood near Tracey's Landing and Town Point; and that a part of his (McCeney's) company, together with others of the militia, attacked a large picket guard of the enemy; and that they were all the time in sight and full view of the enemy, day after day, and that they continued so until they (the British) burnt the houses, after which they went on board. General William Madison, brother of President Madison, arrived with troops from Virginia the day after the houses were burnt. Your deponent also states that the houses burnt by the enemy, about the 15th of October, 1814, consisted of the *tobacco warehouse at Tracey's Landing*, and the houses at Town Point consisted of a windmill, dwelling-house, and several out-houses. Your deponent verily believes that all these houses were burnt by the enemy in consequence of their being occupied by the militia, as they afforded the militia shelter as barracks, or places of rendezvous, and deposit for arms, ammunition, military stores, &c.

Sworn before RINALDO PINDELL.

ANNE ARUNDEL COUNTY, }
State of Maryland, } *ss:*

Personally appeared before me, the subscriber, a justice of the peace for the county and State aforesaid, Mary McPherson, who, being duly sworn on the Holy Evangely of Almighty God, doth depose and declare, that she lived during the late war about a quarter of a mile from the tobacco inspection warehouse located at Tracey's Landing; and that Commodore Barney, while commanding the United States flotilla, took possession of the tobacco inspection warehouse located at Tracey's Landing in the spring of 1814, and had possession of the same until some time in the summer of the same year; and that the

said tobacco inspection warehouse was used as a place of deposit for stores of the United States flotilla and other munitions of war, over which a detachment of men and some officers were placed; and said deponent also states that a short time before the British burnt Tracey's Landing warehouse the militia were called out, and that a fortification was made by standing hogsheads of tobacco up endwise as a protection for the militia to fight under; and the said deponent doth further state, on oath, that a few days after this the British landed from their shipping, took possession of the said tobacco inspection warehouse, burnt and destroyed the same, together with all the fixtures thereto belonging, and a quantity of Maryland tobacco; and this deponent says the enemy placed a large guard near her dwelling-house, that the British officers were often at her house, and she heard them say they burnt the warehouse and the houses at River Point because they were military stations.

Sworn before GASSAWAY WINTERSON.

MARCH 18, 1836.

STATE OF MARYLAND, } ss:
Anne Arundel county,

Personally appeared before the subscriber, a justice of the peace for the county and State aforesaid, Gilbert Nowell, who, being duly sworn on the Holy Evangely of Almighty God, doth depose and declare that he lived about a mile and a half from Tracey's Landing during the late war, and that Commodore Barney took possession of the tobacco inspection warehouse at Tracey's Landing in the spring of 1814, and had possession of the same until some time in the summer of the same year, and that the said tobacco inspection warehouse was used as a place of depot for the stores of the United States flotilla, consisting of provisions, arms, munitions, &c., over which a detachment of men and some officers were placed, and that the said stores and munitions of war were transported by land to the said United States flotilla as was required; and the said deponent also states that a short time before the British burnt down the said tobacco inspection warehouse, the militia was called out, and that a fortification was made with the hogsheads of tobacco by standing the hogsheads of tobacco endwise, as a fortification or protection of the militia to fight under; the said deponent doth further state that a few days after this the British landed from their shipping and took possession of the said tobacco inspection warehouse, and burned and destroyed the house, together with the fixtures there belonging, and a quantity of tobacco.

Sworn before GASSAWAY WINTERSON.

MARCH 18, 1836.

Extracts from Philip J. Thomas' deposition.

The undersigned, who was a private in Captain Franklin's company *of Maryland* militia during the years 1813 and 1814, has read the

deposition of Patrick O'Reilly, dated July 14, 1840, and sworn to before John B. Joy, touching certain circumstances which took place relative to the burning of certain houses at a place called Town Point, Tracey's Landing, or Herring Bay; and also Doctor Walter Wyvill's deposition, dated December, 1837, and his letter explanatory thereof, dated June 26, 1841, relating to the matter aforesaid; also Samuel Getts' deposition, dated July 1, 1841, sworn to before Lewis Sutton, relating to the same. The undersigned has a perfect recollection of the events stated and alluded to in the above enumerated depositions, and has no hesitation in adding his testimony to their truth, verily believing and positively asserting that the statements therein made are incontestably and strictly true, the same having come under his own personal knowledge.

He further states that he distinctly understood at the time that these houses were burnt by the British in consequence of their having been occupied by the militia, and of the places having been fortified as a military station, facts known to the undersigned—he, as a member of Captain Franklin's company, having been quartered in one of the houses, and done military duty at these stations, particularly in the exercise of a gun, then placed to defend the mouth of Tracey's creek. He moreover states that in conversation with Marshall Poole and his wife, the occupants of one of the houses burnt, they informed the undersigned, a few days after the conflagration, that the British officer in command assured them the houses were burnt solely on account of their being considered a military station.

PHILIP J. THOMAS.

WEST RIVER, *Anne Arundel county, December* 10, 1841.

Extracts from the deposition of Colonel William Norman, of Anne Arundel county, Maryland.

The deponent also states that some time in the summer of 1814 Commodore Barney, who commanded the United States flotilla, deposited at his houses, on West river, a quantity of arms, ammunition, military stores, &c., &c., together with a detachment of men; which said arms and ammunition, military stores, &c., together with the detachment of men, were removed from his houses at West river, to the tobacco inspection warehouse at Tracey's Landing, and that they occupied the said warehouse for some time as a depot of arms, provisions, ammunition, and other military stores.

This deponent also verily believes that the houses at Town Point and Tracey's Landing tobacco inspection warehouse were burnt by the enemy because the above houses were occupied by the militia.

Sworn before GASSAWAY WINTERSON.

Extracts from Lemuel Gott's deposition, of Anne Arundel county, and State of Maryland.

"This deponent further *says, that* in the month of June, 1814, a large *parcel of the military stores,* belonging to the United States

flotilla, under the command of Commodore Barney, were the deposites in the tobacco inspection warehouse at Tracy's Landing, and a detachment of men placed there belonging to the United States flotilla.

"This deponent further says, that Captain Franklin, who commanded in the same regiment, ordered to be rolled out, by the men under his command, a parcel of hogsheads of Maryland tobacco out of said warehouse, with which a fortification was made adjacent to and adjoining said warehouse, and extended nearly to the creek, in a circular direction, so as to protect his men from the British barges as they ascended the creek."

Sworn before

LEWIS SUTTON.

Extracts from the deposition of William Ennis.

He "deposes and says that he was a private in Captain Franklin's company, which belonged to the 2d regiment Maryland militia during the late war; that he was born in the immediate neighborhood of Tracey's Landing and Town Point, and resided in said neighborhood until he was nearly fifty years old; that the farm he owned and resided on during the late war was adjoining Captain Franklin's, and that he is perfectly acquainted with the occurrences, and distinctly remembers what took place in this neighborhood during the late war.

"This deponent further says that Commodore Barney, in the spring of 1814, took possession of Tracey's Landing tobacco inspection warehouse, and deposited in it a large supply of the United States military stores, belonging to the flotilla, which, as circumstances required, were wagoned from said warehouse, and some of them deposited in Calvert county court-house, to be more convenient to the United States flotilla, which had been blockaded in St. Leonard's creek by a squadron; and that a part of the military stores belonging to the United States *were never removed from said warehouse*, but were found there by the enemy when they took possession of it."

"This deponent further says, that a short time before the British burnt down Tracey's Landing tobacco inspection warehouse, Captain Franklin, the senior officer then in command, ordered a number of hogsheads to be taken out of the said warehouse, and a fortification made with hogsheads of tobacco, by standing them up endwise, which said fortification was made adjoining to said warehouse, on the side of it, and extended in a semicircle to the creek, to protect the militia against the British barges if they should attempt to come up the creek. The militia company of Captain Franklin did militia duty at Tracey's Landing the same as the companies at Town Point—ate there, slept there, and received their rations there. The company he belonged to (Captain Franklin's) had no tents, and the warehouse was used as barracks, and a depository for arms, ammunition, &c."

"This deponent says he heard Captain Franklin say he was ordered out to Tracey's Landing by the governor; that the orders came

through their field-officer, General Williams, Colonel Samuel Watkins, and Major Gassaway Watkins—all now dead."

Sworn before

A. H. PENNINGTON, *J. P.*

Extracts from the statement of John S. Skinner to the Hon. E. Whittlesey.

I will now relate the facts which I know as well as we may know anything after such a lapse of time—unless, indeed, all our senses are but media of delusive impressions, and there are no realities in life.

On leaving Baltimore, in fulfilment of their construction for the defence of the bay, the boats that composed the flotilla were found to be too narrow; and carrying too heavy cannon, with a large quantity of stores and provisions, they proved to be inadequate to the service in the open bay, and, by orders of Commodore Barney, they put into West river, there landed, as before stated, at my grandfather's old ship-yard, a portion of their military stores and provisions to lighten the barges; and afterwards, for the deposition and safer keeping of these munitions and stores, and because they would be easier of access and of transportation to any point where they might be wanted, Dr. Tongue's warehouse, at Tracey's Landing, was taken possession of and used by the orders of *Commodore Barney,* and a detachment of his men placed there. My purser's steward, James Dixon, many years since dead, was placed in charge of the property, for which I was accountable, while my multifarious duties called me off to other points. This seizure and occupation of the warehouse at Tracey's Landing took place, as nearly as I can remember, about the latter end of May or beginning of June, in the year 1814. It was so *used* and *occupied* as a depot for military stores until after the flotilla was destroyed, about the 23d of August, 1814; and some remnants of them remained, as I always understood and believed, to the time when the enemy drove the militia from Town Point and Tracey's Landing. On the co-operation of the militia, then in the occupation of these points and buildings, Commodore Barney had also relied, as one of the reasons, as I understood from him and his officers, for selecting *this place for his depot.*

The militia, whose services were paid for by the United States, occupied Tracey's Landing warehouse, and the houses at Town Point, about half a mile distant, at the mouth of the creek, until driven off by the enemy. The houses at the village of Tracey's Landing consisted of two private dwellings and two stores for the retail of goods. The neighborhood is thickly settled, and the residences of six respectable farmers in the immediate vicinity were taken possession of by the enemy, and placed under picket guards. The two private dwellings and the two stores at the landing were distant from the warehouse which was burnt, variously from forty or fifty to something upwards of one hundred yards; yet neither of these, nor of the private

dwellings in the neighborhood, and in the actual possession of the enemy, was destroyed. No houses were burned except the warehouse and the houses of Scrivener and Hodson. The conflagration of all these was simultaneous; all of them having been *notoriously* used for purposes strictly military and defensive for months previously, and up to the time of their capture by naval and militia forces in the service of and paid by the United States. Captains Butler and Frazier, seconds in command under Barney, are both [dead,] and I do not now know of any officer who was in command at Tracey's Landing.

With great respect, your obedient servant,

JOHN S. SKINNER,

Late purser in the navy of the United States, and to Barney's flotilla from the commencement to the end of its service and existence.

P. S.—When I was sent by the government one of the commissioners to announce to the enemy, then in the Chesapeake, the conclusion of peace, we found Captain Claville in command of their remaining forces, and I remember that he justified the destruction of the property at Tracey's and Town Point, as other of their officers had uniformly done, on the ground that although, or whether private property or not, it had been used against them as military posts and for military purposes.

J. S. SKINNER.

DISTRICT OF COLUMBIA, }
County of Washington. }

On the 28th day of June, 1838, personally appeared before me, the subscriber, a justice of the peace for the county aforesaid, J. S. Skinner, whose name is subscribed to the foregoing written statement, and makes oath, in due form of law, that the facts set forth therein as of his own knowledge are true, and so far as he has been informed by others he believes to be true.

JAMES YOUNG, *J. P.*

Extract from Dr. James Tongue's affidavit.

STATE OF MARYLAND, }
Anne Arundel county, } *to wit:*

On this 16th day of April, 1836, personally appeared before me, the subscriber, a justice of the peace for the county and State aforesaid, Dr. James Tongue, who, being duly sworn on the Holy Evangely of Almighty God, testifieth: That the militia companies commanded by Captains Thomas Simmons and William S. Tillard (both of these officers being now dead) rendezvoused, as circumstances *required,* during the late war, at the mouth of the creek leading from

the Chesapeake bay to Tracey's Landing tobacco inspection warehouse, and that they fired a piece of cannon at the mouth or narrows of the aforesaid creek for the protection of Tracey's Landing tobacco inspection and the neighborhood generally.

This deponent also states that his farm is partly bounded by Tracey's Landing creek, on which Tracey's Landing tobacco inspection warehouse is situated; and that his dwelling being on a considerable eminence, he was an eye-witness to the occurrences that took place at the mouth of the creek the day the British landed and took possession of Tracey's Landing inspection warehouse, the British in their barges having to pass through the narrows or the mouth of said creek, the channel of which is about fifty yards wide; that, as soon as the British barges approached the mouth of said creek or narrows, the militia commenced an attack with their piece of cannon on the British barges, which, being numerous and well provided with cannon and small arms, soon compelled the militia to abandon their position. The British then landed, spiked the cannon, took possession of all the houses at the mouth of said creek, made a general bonfire of them, and left destitute of homes the two families residing at that time in them.

Your deponent believes that all the described houses were burned because they were used by the militia, and thus because the militia made an attack on them from their piece of cannon, which was situated between the two aforementioned dwelling-houses, and near to each of them.

Sworn before GASSAWAY WINTERSON.

WASHINGTON, *July* 13, 1837.

I certify that I am personally well acquainted with Captain Benjamin McCeney, Colonel William Normen, Samuel Gover, John W. D. Lane, and Rinaldo Pindell, esqrs ; that they are respectable citizens, and entitled to full belief as witnesses. Rinaldo Pindell, esq., is a justice of the peace and a member of the magistrates' court ; and that Gassaway Winterson and Lewis Sutton, esqrs., are also justices of the peace for Anne Arundel county, Maryland.

V. MAXCY.

WASHINGTON, *December* 26, 1841.

DEAR SIR: As you resided in the vicinity of Tracey's Landing and Town Point some time, and are personally acquainted with almost every person in that neighborhood, and moreover as you have been high sheriff and collector of taxes for Anne Arundel county for several years, and also been chief justice of the orphans' court of the said county, and member of the legislature, I will thank you to give me the character of the witnesses who have given depositions in relation to the property *burnt by the enemy* during the late war. The list of

them, as well as I now recollect, is as follows, viz: Dr. Walter Wyville, Samuel Gott, John Collinson, Samuel Gover, P. H. O'Reilly, M. McPherson, Gilbert Nowell, John S. Skinner, Philip F. Thomas, William Enriss, William O'Hara, John H. D. Zane, Col. William Norman, Captain Benjamin McCeney.

Your obedient servant,

JAMES TONGUE.

—

I am well acquainted with these persons whose names comprise this list, and have been intimately acquainted with them individually for many years. Their characters and reputation stand unexceptionable, and their veracity in every respect is unexceptionable.

R. WELCH OF BENJ.

DECEMBER 29, 1841.

ANNAPOLIS, *May* 17, 1842.

MY DEAR SIR: Your letter of the 10th inst. is received; in reply to which, I can say with pleasure, that the persons named in your letter, who made the valuation, and also the witnesses relative to the property burned by the British at Tracey's Landing and Town Point, are personally known to me. They were my neighbors, and all of them I have long known, and with some I have had much dealing and personal intercourse. They are men of fair character and unimpeachable integrity. Samuel Gott, John H. D. Zane, and William O'Hara, have been justices of the peace for many years. Dr. Walter Wyville and William J. Compton have been members of the legislature. John Collinson and William Ennis, practical mechanics, of fair character and strict integrity—in fact, they are men of excellent character and of great worth. Dr. Wyville, member of the last legislature last session. John S. Tillman was chosen member of the legislature last session. Write to James W. Williams, member of Congress, that all the above gentlemen were personally acquainted with them, and they as well as myself will testify unto their standing and character.

With great respect, dear sir, your obedient servant,

R. WELCH OF BENJ.

—

TREASURY DEPARTMENT,

Register's Office, April 17, 1850.

I hereby certify the annexed papers, pages 1 to 33, to be true copies of the originals on file in this office.

TOWNSEND HAINES,

Register.

The Memorial of Christopher Neale of Alexandria, assignee of Jerome and Gerrard Plummer, late merchants of Alexandria.

To the Senate and House of Representatives of the United States.

Your petitioner respectfully represents that he claims, as assignee of Jerome and Gerrard Plummer, late merchants of Alexandria, indemnity from the United States for property destroyed during the late war with Great Britain. That on the breaking out of the war, the said Plummers were extensively engaged in purchasing tobacco in Maryland; that they had large quantities of tobacco in store in the public warehouse at Nottingham, Prince George's county, Maryland; Magruder's warehouse in same county; Tracey's Landing in Anne Arundel county; and Benedict warehouse, in Charles county. That the hogsheads of tobacco, which were in the Nottingham warehouse, were removed by the order of the commanding officer, and erected into a breastwork, with the view of giving protection to our troops; that the village was in imminent danger of being assailed by the enemy, hence the necessity for the defence of the place; that this necessity was so obvious that nobody pretended to deny it; and the commanding officer would have deserved a severe rebuke had he abstained from using the tobacco as a means of defence. The exercise of this power in the present instance was under circumstances of no ordinary occurrence. The unexpected advance of the British troops upon the villages bordering on the Patuxent river in 1814 found this section of the Union wholly unprotected. In June, 1814, when the enemy ascended the Patuxent river, within twenty-eight miles of Washington city, there was not a breastwork, nor a fortification of any description; not a solitary cannon planted to sound an alarm, or check their progress to the Capitol of this Union. What was to be done? Under these trying circumstances, the commanding officer did not hesitate. He lost no time in strengthening his position and fortifying himself in the best manner time and circumstances would allow. If the necessity exist, then that case has arrived, in which the government may take private property, or endanger its safety, for the public defence. The government did this. They did it through their officer, and the result was a loss to said Plummers. Your petitioner prays that as the case of George Armstrong is in all respects the same with this, so far as the tobacco warehouses at Nottingham and Magruder's are concerned, the said papers, affidavits, depositions, letters and statements, &c., &c., be adopted as proofs in this case. It is well established by the depositions herewith filed, that the tobacco, out of which our troops constructed a fortification, was destroyed and carried away by the British in consequence of its being used as a breastwork. (See James Baden and Major Biscoe's affidavits.) It must be recollected by all who are conversant with the events of the late war, that during the year 1814 Nottingham was little else than a garrisoned village. Both the regular army and militia made it the place of rendezvous.—(See Commodore Barney's letter to General Bowie. See note, No. 1.)

Your memorialist deems it proper to account for the cause the ware-

house at Nottingham was not burned, together with a house adjoining thereto, the armory, in which the arms of the militia were constantly kept. Its exemption from conflagration was owing to its immediate proximity to the village, which would have involved the entire village in flames and inevitable destruction.—(See Major Biscoe's statement.)

In relation to the destruction of the warehouse at Magruder's, in Prince George's county, Maryland, the foregoing remarks may be considered as applicable to some extent, in explaining the views upon which the claim for indemnification is founded.

The fact is supported by unquestionable testimony, that the warehouses were occupied by our troops as a shelter and protection. The occupation of buildings need not be a literal occupation, even for a single night. If in the presence of an enemy, it amounted to the occupation which should entitle the owner of the property to full compensation. This position must be conceded. While thus occupied, if it is destroyed, so that occupancy was the cause of its destruction, the government is bound to grant compensation. The individual who owned the property suffered from a new character induced upon his property by the act of the government. The petitioner will further state, that the despatches of Admiral Cockburn, in giving an account of his depredations on the Patuxent river, says that he burnt the warehouses, as he considered them military posts thus; bringing the case precisely within the principles as established by the legislation of Congress.

Extracts from Cockburn's despatches, June 22, 1814.—He says that, "a detachment of sailors and marines was landed on both sides of the river (Patuxent,) and the enemy's militia had assembled to the number of three to five hundred, retreating before them in the woods. The *marines destroyed the tobacco stores* and several houses, *which formed military posts.*" Again, he says, that "Captain Barrie advanced from Benedict to Marlborough; a schooner was found loaded with tobacco; after which they burnt tobacco stores, containing two thousand four hundred hogsheads; the detachment re-embarked."

Your petitioner will now investigate the circumstances under which the tobacco inspection warehouse at Tracey's Landing, Anne Arundel county, Maryland, was destroyed. Tracey's Landing is on a small creek, within a short distance of its mouth, in the Chesapeake bay. During the spring of 1814 Commodore Barney, commanding the American flotilla in the Chesapeake, in order to lighten his vessel, deposited a considerable quantity of munitions of war in the tobacco warehouse at Tracey's landing, and left a detachment of men to guard the same; that the said stores and munitions of war were gradually removed over land to the Patuxent, for the use of the flotilla, and a considerable quantity remained at the time of the destruction of the said warehouse. In October, 1814, the British fleet, in considerable force, under Admiral Warren, appeared in the Chesapeake, in the neighborhood of Town Point and Tracey's Landing. A detachment of militia was ordered to take post at this point, for the defence of the warehouse aforesaid, where a large quantity of tobacco was in store. This detachment occupied the said warehouse as barracks, by order of Capt. Franklin, *their* commanding officer. The governor of Maryland sent a cannon to the

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 50.

CHRISTOPHER NEALE.

JANUARY 9, 1857.—Laid upon the table and ordered to be printed.

Mr. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of Christopher Neale, assignee of Jerome and Gerrard Plummer, both merchants of Alexandria, Va., with the accompanying papers, have had the same under consideration, and now report:

The memorialist states that he claims, as assignee of Jerome and Gerrard Plummer, "indemnity from the United States for property destroyed during the late war with Great Britain," consisting of large quantities of tobacco in store in warehouses at Nottingham, Magruder's Ferry, Tracey's Landing, and at Benedict.

The circumstances attendant upon the loss or destruction of the tobacco in question, as related by the memorialist, and the evidence submitted with a view to establish their existence, are precisely the same with the circumstances set forth and the evidence produced with respect to the claims of the representatives of Rinaldo Johnson and Ann E. Johnson, and of William G. Ridgely and Hodges & Lansdale, heretofore reported on; and as the claim of Neale is in no respect distinguishable from those referred to, your committee, for the reasons given in their report upon Senate bill No. 255, for the relief of the representatives of Rinaldo Johnson and Ann E. Johnson, and their report on Senate bill No. 278, for the relief of William G. Ridgely and Hodges & Lansdale, which reports they desire may be taken as a part of this report, now recommend that the claim of the memorialist be rejected.

CITY OF WASHINGTON.

Be it remembered that on this twenty-fifth day of March, eighteen hundred and thirty-six, personally appeared before the subscriber, a justice of the peace, Virgil Maxcy, and, being duly sworn, deposed and said: That during the period of the late war he resided about six miles from Tracey's Landing; that he knows that the British during the late war burnt down the tobacco inspection warehouse at that plac· together with the *tobacco therein deposited*, and that he believes t *y burnt them for the* reasons stated in the memorial of

Dr. James Tongue, which he has carefully read, and believes to be true in all its statements; that this deponent is well acquainted with the inhabitants generally in the neighborhood of Tracey's Landing, and particularly with John Collins, William J. W. Compton, and Thomas O. Denny; that they are intelligent men, of high respectability and integrity, and that he should have implicit confidence in their statements. This deponent further saith, that the militia that were called out for the defence of the neighborhood at the time the inspection warehouse was burnt by the British at Tracey's Landing were two companies: of one of which Jacob Franklin was captain, Thomas Sullivan was lieutenant, and William Wiem ensign; and of the other, William S. Tillard was captain, Thomas Tongue, jr., lieutenant, and John H. Tillard ensign—all of whom are now dead. And further the deponent saith not.

Sworn before— RICHARD T. BRISCOE.

STATE OF MARYLAND, *Anne Arundel county.*

Personally appeared before the subscriber, a justice of the peace for the county and State aforesaid, Samuel Gover, who, being sworn on the Holy Evangely of Almighty God, doth depose and declare: That he acted as commissary to the Maryland militia, who were called out to defend that part of the shores of the Chesapeake bay from Fishing creek to Tracey's Landing during the year 1814; doth depose and declare that Commodore Barney took possession of the large tobacco inspection warehouse located at Tracey's Landing some time in the spring of 1814, and kept possession of the same until some time in the summer of the same year; and that the said tobacco inspection warehouse was used as a place of depot for the stores belonging to the United States flotilla, consisting of provisions, ammunition, spare sails, and other munitions of war, which were carried by land to Patuxent river, where said flotilla lay a considerable time, over which said stores and munitions of war a detachment of men and some officers were placed; and the said deponent further states and says, that a few days before the British burned down the said inspection warehouse, and, while the British were lying off in the Chesapeake bay, the militia, under the command of Captain Jacob Franklin, (the same officer, now dead,) *rolled out a quantity of tobacco from the said tobacco inspection warehouse, and made a breastwork or fortification by standing the hogsheads of tobacco endwise*, as a protection for the militia to fight under. The deponent doth further state, on oath, that a few days after this, the British landed from their ships and took possession of the said tobacco inspection warehouse at Tracey's Landing, burned and destroyed the same, together with all the fixtures there belonging, and together with a quantity of tobacco.

Sworn before GASSAWAY WINTERSON.

MARCH 18, 1836.

STATE OF MARYLAND, *Anne Arundel county, ss:*

Personally appeared before me, the subscriber, a justice of the peace for the county and State aforesaid, Doctor Walter Wyvill, who, being duly sworn on the Holy Evangely of Almighty God, deposes and says: That he acted during the late war as sergeant in Captain Thomas T. Simmond's company, which belonged to the 2d regiment of Maryland militia; and that this company, with several other companies, were ordered out by the governor of Maryland to repel and keep off the enemy; and that more effectually to prevent the invasion of the British, many of the officers of the 2d regiment of Maryland militia selected a committee to wait on Governor Winder to let them have some pieces of cannon for the defence of Tracey's Landing warehouse, in which were deposited several hundred hogsheads of tobacco, belonging to the tobacco planters, as it was believed this property was in danger of being destroyed by the British, as Commodore Barney used the said tobacco warehouse as a depot for some of the military stores and munitions of war belonging to the United States flotilla. This deponent deposes and says, he was one of the committee who did wait on the governor of Maryland, and the governor did send to said regiment a piece of artillery with a good supply of ammunition, which said artillery was placed at Town Point, or the narrows of or mouth of the creek leading to Tracy's Landing, and for the defence of Tracey's Landing. This deponent further states that the tobacco inspection warehouse at Tracey's Landing, and at houses situated at Town Point, or the narrows at the mouth of the creek leading to Tracey's Landing, were used as places of rendezvous for the militia; and that these houses were occupied and used as barracks by the militia; that they received their rations there, ate there, slept there, deposited their arms, ammunition and other military stores there, did military duty there day by day, and week after week, for a considerable time, and until they were driven from there by the superior force of the enemy. This deponent further deposes and says, that the houses at Town Point, or narrows, at the mouth of the creek leading to Tracey's Landing, consisted of a new dwelling-house, storehouse, and windmill, and out-houses, belonging to William, now deceased, and a dwelling-house and out-houses belonging to John Scrivener; all of which houses, together with the inspection warehouse, with a considerable quantity of tobacco in it, were all burned by the British in the month of October, 1814—he does not now recollect the precise day of the month, but to the best of his knowledge, thinks it was about the middle of October. Your deponent verily believes all the above named houses were burned by the British in consequence of their being used as barracks and military stations, and as places of rendezvous and a depot for arms, ammunition, military stores, &c., &c.

Sworn before

LEWIS SUTTON, Sr.

DECEMBER 6, 1837.

for the public use, and was destroyed *in consequence thereof*. Therefore, as an act of simple justice, the committee report a bill allowing compensation, and recommend its passage by the House.

FEBRUARY 9, 1843.

The Committee of Claims, to whom was referred the petition of Matilda Drury, report:

That the petitioner represents herself as the widow of Samuel Drury, and the only surviving child of Major Thomas Tillard, and the sister of Captain William Smallwood Tillard, both of whom are now dead; and as the legal representative of the latter, she claims compensation for a quantity of tobacco which belonged to said Captain W. S. Tillard, and was destroyed by the British at Tracey's Landing, in the State of Maryland, in the latter part of October, 1814.

The facts which are established in support of her claim are similar in detail to those which were deemed sufficient in the case of James Tongue and others, for whose relief bills were passed at the last session of Congress, and are as follows: Tracey's Landing is on a small creek, and within a short distance of its mouth, on the Chesapeake bay, and Town Point is situated immediately at the mouth of said creek. During the spring of 1814, Commodore Barney, in order to lighten his vessels, consisting of the American flotilla in the Chesapeake, deposited a considerable quantity of munitions of war in the tobacco warehouse at Tracey's Landing, belonging to James Tongue, and left a detachment of men to guard them; that the said stores and munitions of war were gradually removed overland to the Patuxent river, for the use of the flotilla—probably a small remnant still remained at the time of the destruction of the warehouse. In October, 1814, the British fleet, in considerable force, under Admiral Warren, appeared in the Chesapeake, in the neighborhood of Town Point and Tracey's Landing, and a detachment of militia were ordered to take post at those points, for the purpose of preventing the enemy's landing; that a large quantity of tobacco belonging to the inhabitants of the neighborhood was stored in said warehouse. The detachment of militia above mentioned occupied the warehouse and some buildings at Town Point as barracks, by order of Captain Franklin, their commanding officer. The position at Town Point was a strong one, and well calculated to effect the ob,ect for which it was occupied, the creek at its mouth being but about fifty yards wide, and covered by cannon which were sent to this detachment by the governor of Maryland, for the purpose of aiding in its defence. The British boats at length entered the mouth of the creek, and were fired on by the detachment stationed at this point, but being much superior in men and ordnance, they succeeded in dislodging the militia from their position. The enemy then proceeded up the creek to the warehouse of James Tongue, at Tracey's Landing, where the militia there stationed had taken the

hogsheads of tobacco from the said warehouse, and made barricades and fortifications of them, adjacent to and around said warehouse, for their defence; but they were unsuccessful, and obliged to vacate their position. The British troops soon took possession, and burnt the warehouse and other buildings occupied by the militia, and burnt and destroyed the tobacco, but scrupulously abstained from destroying any other property. The tobacco was taken from said warehouse and erected into a fortification by order of Captain Franklin, the officer in command at Tracey's Landing. Patrick Henry O'Reiley, a neighbor of Captain William S. Tillard, testifies "that the removal of the tobacco out of the warehouse to a place of certain safety was suggested and discussed among the neighbors, and propositions made to remove what belonged to them, and some did remove theirs, but by far the greater part was left; and the general conclusion was, that as private property it would be respected by the enemy, and also from an opinion that the militia would be adequate to its protection." And he says: "I have a distinct recollection that Captain Tillard, who had a considerable quantity of tobacco there, refused to permit its removal, because it would imply a distrust of the efficiency of the militia, and of their competency to protect the county and the entrance of the creek leading to Tracey's Landing." The affidavits of Samuel Colt, William Ennis, and James Tongue, are to the same effect, and establish the fact of the tobacco being turned into a fortification. Where it was located, by whose orders it was done, and of its destruction, Dr. James Tongue says: "I was present, and assisted in making said fortification, and the tobacco of the said Captain William S. Tillard was in said fortification." As to the quantity of tobacco put into said fortification and destroyed, Dr. James Tongue further testifies, "that by the laws of Maryland, no tobacco can be exported out of the State, unless each hogshead is opened and inspected by a sworn inspector, who is compelled by law to keep a book and a regular account of every hogshead inspected, with the owner's name, number, mark, and weight, both gross and net. The list of tobacco filed in the case of Matilda Drury, I do declare and say, is to my certain knowledge a true copy, (which I saw copied from the inspector's books, the official record;) and that after the list was made out, I compared it with the inspector's books, and that it was a true and correct copy; and that said hogsheads of tobacco were put into said fortification."

From this testimony, the committee are compelled to the conclusion that the tobacco for which compensation is now asked was taken for public use, and while in the use and possession of the public was destroyed, entitling the claimant, within the principles well established in the decision of similar claims, to a fair and reasonable compensation.

It appears from the list of tobacco filed in this case, and hereunto attached, that there were put into said fortification, of crop tobacco 22,312 pounds, of second tobacco 7,948 pounds, which Virgil Maxcy, esq., late Solicitor of the Treasury, testifies was worth from thirteen to fifteen dollars per hundred pounds. The testimony also establishes the fact that the petitioner is the legal representative of said Captain William S. *Tillard, who died* soon after the late war; that she ap-

plied to Congress for relief in 1836, but that no action was had in her case from that time to the present, further than a report made in 1840, by the Hon. E. Whittlesey, then chairman of this committee, that there was a deficiency of evidence in the case, with an expression of a hope that it might be supplied. She alleges, as a reason why she did not make application for relief prior to 1836, that one Patterson, whose property was destroyed under similar circumstances, applied to Congress for relief soon after the war, and his petition was rejected; that he applied again, a few years since, and obtained relief. The committee find that relief has been granted in most of the cases where applications have been made for losses sustained on the same occasion and under similar circumstances; and that, although they do not altogether approve of the principle adopted in granting relief in the cases referred to, yet they cannot reconcile it to equal justice to make an exception, by reporting adversely on the claim of this widow.

The committee therefore report a bill for the relief of the legal representative of William S. Tillard.

To the honorable Congress of the United States:

The petition of James Tongue respectfully represents: That about the 29th day of March, 1836, he presented a petition to Congress, and the Committee of Claims, by their report, dated March 3, 1837, considered his petition heretofore presented, not sufficiently clear and definite. The defect in the original petition arose from the ignorance of the petitioner not knowing the laws passed by Congress, which were essential to establish claims for property burnt by the enemy during the late war. Your petitioner now states that he only asks pay for the tobacco inspection warehouse, located at Tracey's Landing, in Anne Arundel county, Maryland. Which said property, you will see, was valued at $1,837, by the papers filed with the original petition.

Your petitioner states, that he claims pay for none of the tobacco in said warehouse, either burnt or taken away by the enemy.

It may be asked, why did not your petitioner apply sooner for this claim? To which he replies, that he was aware that J. J. Patterson had applied as early as 1816 for payment of his house, burnt by the enemy, and as his petition was then rejected, he supposed it was useless to apply, as Mr. Patterson's and his (your petitioner's) claims stood precisely on the same footing. But being informed by the honorable Mr. McKim that the Committee of Claims had reported favorably on the claim of J. J. Patterson, in 1836, your petitioner, as soon thereafter as possible, presented his, as the two claims were on the same footing.

In order that the nature of your petitioner's claim may be fairly and distinctly understood, it may be necessary to state that the above named tobacco inspection warehouse was located on a creek that makes from the Chesapeake bay, about half a mile from the mouth of said creek.

It was considered that the point, called Town Point, forming the

mouth of this creek, where it was very narrow, was an advantageous position to be selected for the defence of the surrounding country generally, and also well calculated for the defence of Tracey's Landing tobacco inspection warehouse, and the tobacco therein stored, being several hundred hogsheads, belonging generally to the tobacco planters throughout the neighboring country; and together with these natural advantages, the houses at the mouth of the creek aforesaid, would be a great accommodation to the militia called out to repel any invasion the enemy might make, as there were then more or less of the enemy's men-of-war ships in the Chesapeake bay, and often in this immediate neighborhood.

A portion of the second regiment of Maryland militia were stationed at Tracey's Landing, and at the mouth of the creek leading to Tracey's Landing, and the militia *used and occupied the said tobacco inspection warehouse, and also the houses at Town Point as a rendezvous for the militia.* The houses at the mouth of said creek consisted of a dwelling-house and out-houses belonging to John Scrivener, and also a new dwelling-house, out-houses, windmill, and store for retailing dry goods, belonging to William Hodson. That after the place called Town Point, being at the mouth of the creek leading to Tracey's Landing, was selected as a place of rendezvous for the militia, a piece of artillery was sent by the then governor of Maryland, to be stationed there, a fortification made near the mouth by throwing up an embankment, and a piece of cannon placed upon the margin of the creek, and between the two dwelling houses of John Scrivener and William Hodson before named, which were near to each other, and perhaps about sixty yards apart.

The said tobacco inspection warehouse at Tracey's Landing and the houses at Town Point, were used and occupied by the militia stationed there as barracks; they eat there, slept there, did military duty there, and that the militia there stationed attacked the British barges as they were advancing to Tracey's Landing through the mouth of said creek, and that they held possession until driven off by the superior force of the enemy, who landed, drove off the militia, spiked the cannon, and proceeded on to Tracey's Landing, where they also drove off the militia stationed there, they took possession of Tracey's Landing, used and occupied some of the houses as the headquarters of Commodore Barry, of the Dragon, 74, and employed a good many of their barges in taking tobacco from said warehouse and sending it on board their ships, (which were several seventy-fours and frigates,) which lay at anchor out in the Chesapeake bay, as near to Tracey's Landing as they could; and that the enemy held possession of the houses at Town Point and Tracey's Landing for some time, daily carrying off tobacco, and continued thus to be employed until the day that Gen. William Madison arrived with militia from Virginia, accompanied by a troop of horse belonging to the United States, commanded by Captain Bird; these troops got in the neighborhood after night, and early the next morning the battle at Kirby's Windmill commenced, in which Captain Bird got wounded, and some ten or twelve of the horse of the United States were shot by the enemy.

It may be necessary to remark that a deputation was sent on to the then governor of Maryland, Mr. Winder, informing him of the importance of this part of the county to be protected, and the quantity of tobacco belonging to the planters exposed to the enemy; and, in consequence of this representation, orders were issued by the governor to General Williams, and through him to Colonel Samuel Watkins and Major Gassaway Watkins, (all now dead,) and through them to their immediate respective officers.

Your petitioner asks pay for the tobacco inspection warehouse for the following reasons:

1st. Because it was taken possession of by Commodore Barney in the summer of 1814, and occupied by him as a depot for military stores for the United States flotilla, consisting of ammunition, provisions, cannon balls, &c., which said military stores were deposited in the said tobacco inspection warehouse, and some of the said stores were afterwards wagoned from said warehouse to the flotilla, in St. Leonard's creek, on the Patuxent river, and some were wagoned and deposited in the court-house at Prince Frederick, in Calvert county, which court-house was burned in consequence of said stores being deposited there, and which Congress has this present session allowed to be paid for. A small parcel of cannon ball and grape shot were left in said warehouse, and found there by the British officers when the enemy took possession of it.

There were several other houses at Tracey's Landing which the enemy did not burn or destroy. Commodore Barry, of the Dragon, 74, used the house of my brother (his family being absent) as his headquarters, which stood near the said tobacco inspection warehouse; the British officers ordered their men to stand by to save the other buildings if they should take fire from the burning warehouse, saying that the said tobacco inspection warehouse and the houses at Town Point, or mouth of the creek, were burned in consequence of their being military stations.

Your petitioner does not now know a solitary officer that was attached to the United States flotilla commanded by Commodore Barney, except John S. Skinner, now postmaster of the city of Baltimore, who acted as purser to the said flotilla, whose certificate is hereto annexed.

2d. Your petitioner asks pay because the said tobacco inspection warehouse was taken possession of, used and occupied by the militia ordered out by the civil authority of the State of Maryland, as barracks and a place of rendezvous for the militia, as a depot for arms, ammunition, &c.—(See deposition of Dr. Wyvill, herewith sent.)

3d. Your petitioner asks pay because a considerable number of hogsheads of tobacco were taken out of the said warehouse, and a fortification was made of the said tobacco by setting the hogsheads up endwise, to protect the militia while fighting behind; which said fortification was made adjoining to the said warehouse, which was used and occupied by the militia, until driven off by the superior force of the enemy, about the middle of October, 1814.

JAMES TONGUE.

June 7, 1838.

Certificate of John S. Skinner.

I have carefully read the memorial hereto annexed, signed James Tongue, a gentleman long known to me as one of high character and undoubted integrity; and I can, and hereby do, certify that the statement of facts and occurrences set forth in said memorial is true and substantially accurate in all essential particulars.

At the period referred to the subscriber was a purser in the navy of the United States, charged at the time especially with the supply of clothing and subsistence to Commodore Barney's flotilla; and was, at the same time, agent for the exchange of prisoners of war, and for the conduct and superintendence of all intercourse by flags of truce with the enemy in the waters of the Chesapeake bay. The performance of these duties respectively made the undersigned familiar with the position, movements, and proceedings of both the American and British forces, as he has ever been with all the localities described in said memorial. It is within the knowledge and recollection of the subscriber that the warehouse at Tracey's Landing, destroyed by the enemy, was used and occupied by Commodore Barney as commander of the United States flotilla; that said warehouse, and the houses of Scrivener and Hodson at Town Point, were also used, as set forth, as military positions, and most eligible points of defence by the American militia for repelling the enemy and defending the adjacent country; and that said warehouse at Tracey's, as well as the houses at Town Point, mouth of Tracey's creek, on the dislodgement of the American forces were seized by the enemy, and, as was alleged by them to the subscriber, were destroyed on the express ground of their having been so used and occupied as military positions and defences by the American forces in the service of the United States, as in fact they are known to have been, by order of the officers commanding said forces.

J. S. SKINNER.

MAY 8, 1838.

STATE OF MARYLAND, } *ss.*
City of Baltimore. }

On this eighth day of June, in the year of our Lord eighteen hundred and thirty-eight, before the subscriber, a justice of the peace of the State of Maryland, in and for the city aforesaid, appears John S. Skinner, and makes oath on the Holy Evangely of Almighty God, that the matters and things set forth in the aforegoing statement are true to the best of his knowledge and belief.

Sworn before

THOMAS B. POTTINGER.

NOTTINGHAM, *August* 18, 1814.

SIR: As soon as you may find yourself justified in discharging the militia, you will oblige me by directing the sergeant and his party,

of the regulars, with the eighteen-pounder, to proceed to Upper Marlborough and await orders.

WM. H. WINDER,
Brigadier General, &c.

Major WASHINGTON BISCOE.

The above order, in the handwriting of General Winder, is filed with the committee in the case of George Armstrong.

I certify that the above is in the handwriting of my father, Wm. H. Winder.

CHAS. H. WINDER.

MARCH 5, 1850.

WASHINGTON, *April* 5, 1850.

DEAR SIR: In answer to your inquiry, whether the Hon. Judge Clement Dorsey, late a member of Congress, subsequently a judge of the first judicial district of Maryland, was or not aid-de-camp to Brigadier General Philip Stuart during the late war with Great Britain? I reply that, in the years 1813 and 1814, he did act as such; and that I was myself, during part of that period, in General Stuart's camp.

Yours, very respectfully,

T. SMITH.

Major W. B. SCOTT.

Copies of orders of his Excellency Governor Winder to Major Biscoe.

[Extract from the Adjutant General's Office, Annapolis.]

ANNAPOLIS, *June* 12, 1814.

SIR: Yours of this day has been delivered to me. Arms and ammunition left this place this morning for Nottingham. I presume they will arrive by 12 o'clock to-morrow, if not sooner.

GENERAL WINDER.

Major BISCOE.

Extract of Governor Winder's letter to Colonel Terry, of Calvert county, Maryland.

ANNAPOLIS, *June* 8, 1814.

SIR: This afternoon I received yours of the 5th instant, and I have just now received yours of this day informing me of the intention of Commodore Barney. You will make every exertion to give him all the aid in your power in the flotilla. At such a time, and o-

an occasion, it is presumed no man of reflection would hesitate in contributing, to the utmost of his power, to preserve these vessels from the annoyance of the enemy. It is not now to be inquired into whether they have taken the best possible position, but where they can be best defended. I will send you down the articles you have required, and, in addition, will send some ammunition and flints. I have written to Captain Franklin and Captain Simmons to afford you all the assistance in their power, should you want it. I have written to General Wirt to give you such aid as may be in his power, should you call for any, which letter I have herewith forwarded to you, and, should you find it necessary, you will immediately forward to him. I will expect to hear from you as often as you may think necessary, and any aid in my power I will most readily afford; but I presume the general government will have taken the necessary steps for the protection of the flotilla.

GENERAL WINDER.

Colonel TERRY.

James Monroe, President of the United States of America, to William Minor, Thomas Vowell, George Wise, and Christopher Neale, greeting:

Know ye, That reposing special trust and confidence in your integrity, ability, dilligence and discretion, I have appointed you jointly and severally, and every one of you, justices of the peace in the county of Alexandria, in the District of Columbia, and to keep and cause to be kept all laws for the good of the peace and for the preservation of the same, and for the quiet rule and government of the people made in all and singular, their articles in the said county, according to the force, form and effect of the same, and further to do and perform every act and thing within the said county which by law you may do and perform as justices of the peace, with all the powers, privileges and emoluments to the same office of justice of the peace of right appertaining, until the end of the next session of the Senate of the United States, and no longer.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

[L. S.] Given under my hand at the city of Washington, the fourth day of October, A. D. 1819, and of the independence of the United States the forty-fourth.

[The President's name taken off for the autograph. This commission is, no doubt, of record in the State Department; they were for five years.

CHRISTOPHER NEALE.]

ALEXANDRIA COUNTY, *sct.*

Personally appeared before me, the undersigned justice of the peace for said county, Christopher Neale, named in the within commission, and made oath *according to law*, well and faithfully to do, perform,

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 51.

GEORGE W. BISCOE.

JANUARY 9, 1857.—Laid upon the table and ordered to be printed.

MR. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom the memorial of George W. Biscoe was referred, have had the same under consideration, and now report:

The memorialist claims indemnity from the United States for tobacco destroyed during the late war with Great Britain, whilst in store in warehouses at Nottingham, Magruder's Ferry, and Benedict.

There is nothing whatever in his case which distinguishes it from the cases of the representatives of Rinaldo Johnson and Ann E. Johnson, and of William G. Ridgely and Hodges & Lansdale, heretofore reported on in considering Senate bills No. 255 and 278, and for the reasons given in those reports, your committee recommend that the claim of the memorialist be rejected.

THE MEMORIAL OF GEORGE W. BISCOE, OF MARYLAND.

To the Senate and House of Representatives of the United States:

Your petitioner respectfully represents that he claims indemnity from the United States for property destroyed during the late war with Great Britain. That on the breaking out of the war, he had large quantities of tobacco in store in the public warehouse at Nottingham, Prince George's county, Maryland; Magruder's warehouse, in same county, and Benedict warehouse in Charles county. That the hogsheads of tobacco which were in the Nottingham warehouse were removed by the order of the commanding officer, and erected into a breastwork, with the view of giving protection to our troops; that the village was in imminent danger of being assailed by the enemy, hence the necessity for the defence of the place; that this necessity was so obvious that nobody pretended to deny it; and the commanding officer would have deserved a severe rebuke had he abstained from using the tobacco as a means of defence. The exercise of this power in the present instance was under circumstances of no ordinary occurrence. The unexpected advance of the British troops

upon the villages bordering on the Patuxent river, in 1814, found this section of the Union wholly unprotected. In June, 1814, when the enemy ascended the Patuxent river, within twenty-eight miles of Washington city, there was not a breastwork, nor a fortification of any description—not a solitary cannon planted to sound an alarm, or check their progress to the Capitol of this Union. What was to be done? Under these trying circumstances, the commanding officer did not hesitate. He lost no time in strengthening his position and fortifying himself in the best manner time and circumstances would allow. If the necessity exist, then that case has arrived, in which the government may take private property, or endanger its safety, for the public defence. The government did this. They did it through their officer, and the result was a loss to said Biscoe. Your petitioner prays that as the case of George Armstrong is in all respects the same with this, so far as the tobacco warehouses at Nottingham and Magruder's are concerned, the said papers, affidavits, depositions, letters and statements, &c., &c., be adopted as proofs in this case. It is well established by the depositions herewith filed that the tobacco, out of which our troops constructed a fortification, was destroyed and carried away by the British in consequence of its being used as a breastwork.—(See James Baden and Major Biscoe's affidavits, filed in Neale's case.) It must be recollected by all who are conversant with the events of the late war, that during the year of 1814, that Nottingham was little else than a garrisoned village. Both the regular army and militia made it the place of rendezvous.—(See Commodore Barney's letter to General Bowie. See note No. 1.)

Your memorialist deems it proper to account for the cause the warehouse at Nottingham was not burned, together with a house adjoining thereto, the armory, in which the arms of the militia were constantly kept. Its exemption from conflagration was owing to its immediate proximity to the village, which would have involved the entire village in flames and inevitable destruction.—(See Major Biscoe's statement. See the original affidavits of Captain James Baden and Major G. W. Biscoe, filed among the papers, and memorial of Christopher Neale, of Alexandria, as regards the occupation of the warehouses by the troops of the United States, in the destruction of the same in consequence of such occupation, and the use of the tobacco as a fortification, &c., &c.)

In relation to the destruction of the warehouse at Magruder's in Prince George's county, Maryland, the foregoing remarks may be considered as applicable, to some extent, in explaining the views upon which the claim for indemnification is founded.

The fact is supported by unquesti[illegible]le testimony that the warehouses were occupied by our tr[illegible] shelter and protection. The occupation of buildings n[illegible] literal occupation even for a single night. If in [illegible]unted to the occupation which sh[illegible]ty to full compensation. Th[illegible] thus occupied, if it is des[illegible]its destruction, the gover[illegible] The individual who ow[illegible]acter induced

upon his property by the act of the government. The petitioner will further state, that the despatches of Admiral Cockburn, in giving an account of his depredations on the Patuxent river, says that he burnt the warehouses, as he considered them military posts, thus bringing the case precisely within the principles as established by the legislation of Congress.

Extracts from Cockburn's despatches, June 22, 1814.—"He says that a detachment of sailors and marines were landed on both sides of the river, (Patuxent,) and the enemy's militia had assembled to the number of three to five hundred, retreating before them in the woods; the *marines destroyed the tobacco stores* and several houses, *which formed military posts.*" Again, he says, "that Captain Barrie advanced from Benedict to Marlborough, a schooner was found loaded with tobacco, after which they burnt tobacco stores, containing two thousand four hundred hogsheads; the detachment re-embarked."

Your petitioner will now proceed to the investigation of the circumstances under which the tobacco stored in the warehouse at Benedict, Charles county, Maryland, was destroyed and carried away by the naval forces of Great Britain.

In June, 1814, the naval forces of Great Britain ascended the Patuxent river with a very considerable number of vessels of war; on the 15th of June they reached the village of Benedict. For the purpose of resisting the aggressive movements of the enemy, and to arrest their depredations, a portion of the troops of the United States had been stationed in Benedict. The commanding officer of the army finding the station a very exposed one, and without any fortification behind which his men could protect themselves in the event of a conflict with the enemy, and to oppose, if possible, their landing, he was compelled to resort to the only means available, to seize and remove the hogsheads of tobacco then stored in the warehouse, for the purpose of erecting a breastwork. The order to roll the hogsheads of tobacco out of the warehouse, and to construct a breastwork, was given by an officer of the United States army; that a battery was constructed out of said tobacco.—(See Cusick's testimony.)

This was the conversion of private property into the public use, and would grow out of that state of necessity which is superior to all law, and flows from what the civilians called the eminent domain which belong to all governments, and is founded on the irresistible dictate and impulse of self-preservation. Every writer in treating of the rights of sovereignty says that, when a nation is at war, it has a right to avail itself of all its means.

The rule laid down in the laws of Congress is, that if the United States, in the prosecution of a war, occupy and use the property of a citizen for military purposes, so as to make it the legitimate object for capture and destruction, according to the rules of civilized warfare, and if, in consequence of such occupancy, the enemy be drawn upon and do capture and destroy it, the owner shall be compensated out of the public treasury. This is manifestly right, and it is no more than simple justice, under the provision of the Constitution which prohibits the taking of private property for public use without just compensation.

As to the extent of the occupation of the village of Benedict by the British troops, it must be recollected by all who are conversant with the history of the late war, that the country bordering on the Patuxent river, during the year 1814, was little else than a great cantonment. The British troops held possession of this village during the whole summer and part of the fall of 1814 The regulars had been driven out of possession by the arrival of a superior naval force, and the property was destroyed by the enemy. It would be absurd to say that the government would not pay for its destruction, because our troops were not in actual possession at the time of its destruction. Your petitioner begs leave to state that the abandonment of the possession should be of such a character that the owner could take possession, and enjoy all the rights to which he was entitled, otherwise the troops would be in constructive possession.

That the regulars were stationed in the village of Benedict is a fact, sustained by the affidavit of Austin Cusick, and by the letter of the late Hon. Clement Dorsey to General Philip Stuart, then commander of the militia forces in this section of the State. Your petitioner will remark that the said Hon. Clement Dorsey was the aid-de-camp to General Philip Stuart.—(See Hon. Daniel Jenifer's statement.)

By a reference to Admiral Cockburn's despatches to Admiral Cochrane, the statement of Austin Cusick is fully sustained and corroborated. He says "that on the 15th of June, 1814, the Narcissus arrived, and Captain Barrie determined to proceed up the river in twelve boats, having in them one hundred and eighty marines and thirty of *the black colonial corps;* they proceeded to Benedict, where a party of regulars fled, leaving behind several muskets and a part of their camp equipage."

Again, by a reference to the Federal Republican, bearing date 24th June, 1814, which contains a diary of the operations of the enemy from the time Barney's flotilla entered the Patuxent, it will be found that Commodore Barrie, in a conversation with the honorable Clement Dorsey, stated that there were "military and artillery pieces" stationed in Benedict. This assertion on the part of the British commander is not controverted by Dorsey.—(See Clement Dorsey's conversation with the commander and herewith filed.) The facts as contained in the above recited documents go conclusively to the support of Cusick's testimony in relation to the companies of the United States being stationed in Benedict.

The most open village, if resolutely defended, will cost many men before its fall; the village of Benedict being located in an open plain, and situated immediately on the banks of the Patuxent river—from its peculiar localities, surrounded by creeks and marshes, the frame buildings, so far as the working of artillery pieces, affording no shelter, could not have been maintained for one hour against a superior force. In the next place, an officer would have displayed a great want of military knowledge, in the disposition either of artillery or infantry, to have stationed there a military force, for any effective purpose, much less have attempted to oppose the landing of the enemy's troops without constructing some work of defence, behind which his men could find protection from the firing of the enemy's vessels

of war. The conclusion seems to be irresistible, from these facts and circumstances, that the situation of our troops absolutely required the erection of a fortification. That such an entrenchment was thrown up there can be no doubt, for it is expressly stated that the tobacco was rolled out of the warehouse, and used as a fortification.—(See John L. Dorsey's affidavit.)

These are the material circumstances attending the destruction of the tobacco at the Benedict warehouse, and in the face of them can there be doubt as to the cause of the destruction? Was it not palpably the use made of this tobacco, its change from a pacific to a hostile character? Your petitioner ascribes the destruction of the tobacco to its use and occupation by the regulars of the United States service, and the preparation by them to repel the invasion by the British forces.—(See Cusick's testimony.) There is no principle better established than this, that if property is destroyed by one of the incidents to the situation and employment of our troops in which it is placed, the government is liable.

Was this tobacco in the Benedict warehouse destroyed and carried away by the British troops? In the affidavits of Zachariah Sothoron, John Moran and Austin Cusic, bearing date 11th March, 1824, and herewith filed, it is distinctly stated that the tobacco at the Benedict warehouse was destroyed and carried away by the enemy, in consequence of the use to which it was appropriated by our troops, when said forces landed in Benedict. The affiants say, "that there was considerable quantity, say four or five hundred hogsheads, of tobacco in said warehouse when said force landed;" again, these deponents say they saw the enemy "burning and otherwise destroying tobacco in the said town of Benedict, not more than thirty hogsheads remained in and about the warehouse."

Your petitioner will remark that the foregoing affidavit was found in the State department, and filed in a case pending before the board of commissioners, which assembled in the city of Washington, to adjust and examine into the validity of claims under the first article of the treaty of Ghent. According to the interpretation imposed upon this article, it was deemed unnecessary to shew how and in what manner the property was destroyed—it was merely necessary to establish the fact that the property was deported by the naval power of Great Britain, and within the waters of the United States, at the time of the ratifications of the treaty of peace. Hence the *omission* on the part of the affiants to state that the destruction or the carrying away of the tobacco was in consequence of its being used as a fortification for our troops—all that was required of the claimant was to show its destruction and deportation.

The conclusion that a portion of the army of the United States were stationed in Benedict, and that the tobacco was used as a fortification, and destroyed and carried away by the British forces, perfectly harmonizes with all testimony filed by your petitioner. The testimony of the deponents strengthen and support each other in all the positions assumed by your memorialist, as regards the destruction of the tobacco in the *Benedict warehouse*. The precedents in favor of the *claim now presented are full* and complete.—(See the reports of the

Committee of Claims, House of Representatives, No. 132, 29th Con-Congress, 1st session, and reference to the case of James Tongue and others. See 15th Congress, 1st session, No. 391 House reports, 15th Congress, 1st session, 420 House reports.)

Independently of the intrinsic merits of the claim of your memorialist, it is contended that the principle of indemnity has been recognized and established by the decision in the case of James F. Sothoron, passed at December session 1848, which is, in all its circumstances, far short of the present case. In that case the principle is laid down that personal property shall be paid for by the government, whenever it is converted to public use.—(See note, No. 2.)

In the view which that committee formed of this case from the evidence, there can be no doubt they considered all the *government responsibility* attaching, as soon as the occupation commenced by the American troops, and its consequent destruction by the enemy.—(See note, No. 3.)

That, in the great lapse of time, it is a difficult work to procure testimony connected with the events of the late war with Great Britain; that many persons who witnessed the scene of what was then called the "Chesapeake depredations" have died, and but few survive to give a full history of that day. It cannot be expected that these events should be sustained by the same definite and precise proof as that which may be required, according to the strict principles of a legal proceeding, but that your honorable bodies will consider the special circumstances of the case and grant compensation in conformity with the principles of equity and justice. The 5th section of the act of 1816 declares "that where any property impressed or taken by public authority, for the use or subsistence of the army during the late war, has been destroyed, lost or consumed, the owner of such property shall be paid the value thereof." This section is general, and embraces every description of property. The precedents established and referred to in this memorial proves that Congress did not intend that the act of 1816 should form the boundary of relief; on the contrary, that it considered the special circumstances of each case, and grant indemnification in conformity with the principles of equity and expediency. There can be nothing in this section that sanctions, by the remotest implication, the doctrine that compensation should not be granted in all cases where property has been used for belligerent purposes, and offensive operations.

The change of our amicable relations with a foreign power works a change in civil government, and destroys many of the securities by which we hold our property.

Your petitioner further states that the evidence of this tobacco being stored in the warehouse at Nottingham, and at Magruder's and Benedict, is fully established by the tobacco notes which were given by the inspectors, in obedience to the laws of Maryland regulating the inspection and safe keeping of the tobacco. By the act of Maryland passed in 1801, ch. 63, section 18, it is declared that the inspector or inspectors who shall pass any tobacco shall deliver as many notes, *under the hand* of the inspector or inspectors, to the owner and in his *name, as shall* be required, in which note or receipt shall be expressed

the place and time of reception, the mark of the warehouse, the number, and the gross, tare and nett weights for all tobacco inspected and passed; and also in the note shall be expressed whether of the first or second quality, the first quality to consist of tobacco clear of and unmixed with trash; and the said notes shall be payable to the said owner or bearer, and shall be current and receivable in payment of all debts and contracts for tobacco, or judgments and decrees on contracts for tobacco, according to the terms and intention of the contract, judgment or decree, (as the case may be,) and shall be *transferable* from one person to another, and shall be paid, upon demand, by the inspector or inspectors who signed the same.—(See the notes and manifest.)

Section 26 provides a penalty for forging manifests or notes.

Section 39 declares that inspectors "are declared to be answerable to the owners of any notes mentioned and described in such manifest, so far as to produce the same hogshead or hogsheads of tobacco belonging to any owner."—(See Dorsey's Laws of Maryland, page 453, vol. 1.

Your memorialist prays such relief in the premises as may be fair and reasonable.

NOTE No. 1.—See Brigadier General Winder's letter to Major Biscoe, and herewith filed; also, General Winder's letter bearing date 27th July, 1814, to the Secretary of War, in which he says that Col. Bowen's Regiment, 390 strong, and a detachment of regulars under the command of Lieut. Col. Scott, were stationed at Nottingham.—(See Niles' Register, vol. 7, his approaching the town, (Nottingham,) a few shots were exchanged between the boats and page 283; also, Admiral Cockburn's official report to Admiral Cockrane, in which he gives a detailed account of his naval operations on the waters of the Pautuxent.) He says "that upon some of the enemy's cavalry."

NOTE No. 2.—See Senate report No. 129, 30th Congress, 1st session; House of Representatives report 57. The report of the Senate states "that it is difficult to draw a distinction, in equity, *between a claim for loss of buildings and for the personal property they contain.*"

NOTE No. 3.—See the case of John S. Stiles, adjudicated in the 27th Congress, 2d session. He claimed indemnity for vessels sunk for the defence of the city of Baltimore in 1814. The Judiciary Committee of the Senate say "that it is the duty of the government to make compensation for them and the damages which their owners had sustained." An act passed for his relief—see vol. 6 United States Statutes at Large, page 126—also the act for the relief of sundry citizens of Baltimore for the sinking of vessels at the mouth of the harbor of Baltimore.—(See vol. 6 United States Statutes at Large, page 265.)

A manifest of tobacco, as shown by the accompanying notes, in the warehouse at Magruder's ferry and at Benedict, upon the Patuxent river, belonging to George W. Biscoe, viz:

At Magruder's warehouse.

H. W.—292	1,188—105	1,083
H. W.—293	1,162—108	1,054
T. W.—371	1,085—108	977
B. C.—183	982—111	871
J. T. W.—382	1,025—100	925
J. L.— 13	931—100	831
C. P.—317	900—100	800
J. T. W.—210	*1,215—104*	1,111

Benedict Warehouse.

J. B. L.—	60	840—110	730
	61	992—114	878
	62	974—112	862
	63	1,082—110	972
	64	956— 99	857
W. B.—	303	1,150— 95	1,055
C. M.—	15	1,150—107	1,043
J. B. L.—	345	925— 96	829
J. S.—	5	1,082—107	975
A. E.—	22	1,073—115	958
J. W.—	10	1,129—117	1,004
J. H.—	56	1,025—110	915
J. W.—	88	1,049—125	926
R. S.—	50	1,025—100	925
W. G.—	37	1,038— 96	942
J. S.—	18	1,062—100	962
J. R.—	49	1,111—104	1,007
F. H.—	181	1,036—100	936
S. B.—	21	1,013—113	900
E. S.—	311	986—125	861
J. B. L.—	1	847—107	740
	3	676—103	573
	2	926—102	824
	24	993—112	881

The accompanying notes are transferable from one person to another, and shall be paid by the inspector or inspectors who signed the same, (see Dorsey's Laws of Maryland, page 453, 1st vol.,) and are current and receivable in payment of all debts and contracts for tobacco, or judgments and decrees on contracts for tobacco.

A list of seventeen hogsheads of tobacco, as under noted, belonging to George W. Biscoe, of the county of Prince George's and State of Maryland, fourteen hogsheads of which were taken and carried away by the British from the tobacco warehouse at Nottingham, and three hogsheads were burnt by them at Magruder's tobacco warehouse during the invasion, in the year 1814.

Nottingham Warehouse Crop.

T. M.—	No. 101	1,091— 90	1,001
I. B.—	41	1,127— 95	1,032
T. B.—	45	1,100—104	996
W. C.—	122	1,003—100	903
I. T.—	21	967—114	853
W. T.—	11	908— 96	812

Second Nottingham Warehouse.

A. B.—No.	81	930— 98	832
L. T. G.—	8	936— 98	838
I. L.—	15	1,100—111	989
I. T.—	16	950— 97	853
	17	1,010—105	905
W. T.—	4	900—100	800
G. B.—	105	1,000—100	900
T. T.—	95	1,048— 94	954

Magruder's Warehouse Crop.

I. S.—No.	109	1,077—115	962
G. W.—	222	1,039—100	939
R. V. S.—	218	1,010—108	902

I, Henry M. Chew, at present inspector of tobacco at Nottingham warehouse, do hereby certify that the above list of tobacco is a true copy of the record on the inspector's books, and that the same I fully believe were taken away by the British during the invasion, in the year 1814.

HENRY M. CHEW, *Inspector.*

—

I certify that the above mentioned three hogsheads of crop tobacco were in the warehouse at Magruder's at the time it was burnt by the British, in the year 1814.

JAMES BADEN, *Inspector.*

—

MARYLAND,
Prince George's county. } *to wit.*

Be it remembered, that on this 23d day of February, 1848, appears George W. Biscoe, and makes oath on the Holy Evangely of Almighty God that the above list of seventeen hogsheads of tobacco is just and true, to the best of his knowledge and belief.

Sworn to before THOMAS M. D. BADEN,
Justice of the Peace.

—

MARYLAND,
Prince George's county. } *sct.*

I hereby certify that Thomas M. D. Baden, gentleman, before whom the within and *aforegoing* acknowledgment appears to have been made,

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 51.

GEORGE W. BISCOE.

JANUARY 9, 1857.—Laid upon the table and ordered to be printed.

MR. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom the memorial of George W. Biscoe was referred, have had the same under consideration, and now report:

The memorialist claims indemnity from the United States for tobacco destroyed during the late war with Great Britain, whilst in store in warehouses at Nottingham, Magruder's Ferry, and Benedict.

There is nothing whatever in his case which distinguishes it from the cases of the representatives of Rinaldo Johnson and Ann E. Johnson, and of William G. Ridgely and Hodges & Lansdale, heretofore reported on in considering Senate bills No. 255 and 278, and for the reasons given in those reports, your committee recommend that the claim of the memorialist be rejected.

THE MEMORIAL OF GEORGE W. BISCOE, OF MARYLAND.

To the Senate and House of Representatives of the United States:

Your petitioner respectfully represents that he claims indemnity from the United States for property destroyed during the late war with Great Britain. That on the breaking out of the war, he had large quantities of tobacco in store in the public warehouse at Nottingham, Prince George's county, Maryland; Magruder's warehouse, in same county, and Benedict warehouse in Charles county. That the hogsheads of tobacco which were in the Nottingham warehouse were removed by the order of the commanding officer, and erected into a breastwork, with the view of giving protection to our troops; that the village was in imminent danger of being assailed by the enemy, hence the necessity for the defence of the place; that this necessity was so obvious that nobody pretended to deny it; and the commanding officer would have deserved a severe rebuke had he abstained from using the tobacco as a means of defence. The exercise of this power in the present instance was under circumstances of no ordinary occurrence. The unexpected advance of the British troops

upon the villages bordering on the Patuxent river, in 1814, found this section of the Union wholly unprotected. In June, 1814, when the enemy ascended the Patuxent river, within twenty-eight miles of Washington city, there was not a breastwork, nor a fortification of any description—not a solitary cannon planted to sound an alarm, or check their progress to the Capitol of this Union. What was to be done? Under these trying circumstances, the commanding officer did not hesitate. He lost no time in strengthening his position and fortifying himself in the best manner time and circumstances would allow. If the necessity exist, then that case has arrived, in which the government may take private property, or endanger its safety, for the public defence. The government did this. They did it through their officer, and the result was a loss to said Biscoe. Your petitioner prays that as the case of George Armstrong is in all respects the same with this, so far as the tobacco warehouses at Nottingham and Magruder's are concerned, the said papers, affidavits, depositions, letters and statements, &c., &c., be adopted as proofs in this case. It is well established by the depositions herewith filed that the tobacco, out of which our troops constructed a fortification, was destroyed and carried away by the British in consequence of its being used as a breastwork.—(See James Baden and Major Biscoe's affidavits, filed in Neale's case.) It must be recollected by all who are conversant with the events of the late war, that during the year of 1814, that Nottingham was little else than a garrisoned village. Both the regular army and militia made it the place of rendezvous.—(See Commodore Barney's letter to General Bowie. See note No. 1.)

Your memorialist deems it proper to account for the cause the warehouse at Nottingham was not burned, together with a house adjoining thereto, the armory, in which the arms of the militia were constantly kept. Its exemption from conflagration was owing to its immediate proximity to the village, which would have involved the entire village in flames and inevitable destruction.—(See Major Biscoe's statement. See the original affidavits of Captain James Baden and Major G. W. Biscoe, filed among the papers, and memorial of Christopher Neale, of Alexandria, as regards the occupation of the warehouses by the troops of the United States, in the destruction of the same in consequence of such occupation, and the use of the tobacco as a fortification, &c., &c.)

In relation to the destruction of the warehouse at Magruder's in Prince George's county, Maryland, the foregoing remarks may be considered as applicable, to some extent, in explaining the views upon which the claim for indemnification is founded.

The fact is supported by unquestionable testimony that the warehouses were occupied by our troops as a shelter and protection. The occupation of buildings need not be a literal occupation even for a single night. If in the presence of an enemy, it amounted to the occupation which should entitle the owner of the property to full compensation. This position must be conceded. While thus occupied, if it is destroyed, so that occupancy was the cause of its destruction, the government is bound to grant compensation. The individual who owned the property suffered from a new character induced

upon his property by the act of the government. The petitioner will further state, that the despatches of Admiral Cockburn, in giving an account of his depredations on the Patuxent river, says that he burnt the warehouses, as he considered them military posts, thus bringing the case precisely within the principles as established by the legislation of Congress.

Extracts from Cockburn's despatches, June 22, 1814.—"He says that a detachment of sailors and marines were landed on both sides of the river, (Patuxent,) and the enemy's militia had assembled to the number of three to five hundred, retreating before them in the woods; the *marines destroyed the tobacco stores* and several houses, *which formed military posts.*" Again, he says, "that Captain Barrie advanced from Benedict to Marlborough, a schooner was found loaded with tobacco, after which they burnt tobacco stores, containing two thousand four hundred hogsheads; the detachment re-embarked."

Your petitioner will now proceed to the investigation of the circumstances under which the tobacco stored in the warehouse at Benedict, Charles county, Maryland, was destroyed and carried away by the naval forces of Great Britain.

In June, 1814, the naval forces of Great Britain ascended the Patuxent river with a very considerable number of vessels of war; on the 15th of June they reached the village of Benedict. For the purpose of resisting the aggressive movements of the enemy, and to arrest their depredations, a portion of the troops of the United States had been stationed in Benedict. The commanding officer of the army finding the station a very exposed one, and without any fortification behind which his men could protect themselves in the event of a conflict with the enemy, and to oppose, if possible, their landing, he was compelled to resort to the only means available, to seize and remove the hogsheads of tobacco then stored in the warehouse, for the purpose of erecting a breastwork. The order to roll the hogsheads of tobacco out of the warehouse, and to construct a breastwork, was given by an officer of the United States army; that a battery was constructed out of said tobacco.—(See Cusick's testimony.)

This was the conversion of private property into the public use, and would grow out of that state of necessity which is superior to all law, and flows from what the civilians called the eminent domain which belong to all governments, and is founded on the irresistible dictate and impulse of self-preservation. Every writer in treating of the rights of sovereignty says that, when a nation is at war, it has a right to avail itself of all its means.

The rule laid down in the laws of Congress is, that if the United States, in the prosecution of a war, occupy and use the property of a citizen for military purposes, so as to make it the legitimate object for capture and destruction, according to the rules of civilized warfare, and if, in consequence of such occupancy, the enemy be drawn upon and do capture and destroy it, the owner shall be compensated out of the public treasury. This is manifestly right, and it is no more than simple justice, under the provision of the Constitution which prohibits the taking of private property for public use without just compensation.

As to the extent of the occupation of the village of Benedict by the British troops, it must be recollected by all who are conversant with the history of the late war, that the country bordering on the Patuxent river, during the year 1814, was little else than a great cantonment. The British troops held possession of this village during the whole summer and part of the fall of 1814 The regulars had been driven out of possession by the arrival of a superior naval force, and the property was destroyed by the enemy. It would be absurd to say that the government would not pay for its destruction, because our troops were not in actual possession at the time of its destruction. Your petitioner begs leave to state that the abandonment of the possession should be of such a character that the owner could take possession, and enjoy all the rights to which he was entitled, otherwise the troops would be in constructive possession.

That the regulars were stationed in the village of Benedict is a fact, sustained by the affidavit of Austin Cusick, and by the letter of the late Hon. Clement Dorsey to General Philip Stuart, then commander of the militia forces in this section of the State. Your petitioner will remark that the said Hon. Clement Dorsey was the aid-de-camp to General Philip Stuart.—(See Hon. Daniel Jenifer's statement.)

By a reference to Admiral Cockburn's despatches to Admiral Cochrane, the statement of Austin Cusick is fully sustained and corroborated. He says "that on the 15th of June, 1814, the Narcissus arrived, and Captain Barrie determined to proceed up the river in twelve boats, having in them one hundred and eighty marines and thirty of *the black colonial corps;* they proceeded to Benedict, where a party of regulars fled, leaving behind several muskets and a part of their camp equipage."

Again, by a reference to the Federal Republican, bearing date 24th June, 1814, which contains a diary of the operations of the enemy from the time Barney's flotilla entered the Patuxent, it will be found that Commodore Barrie, in a conversation with the honorable Clement Dorsey, stated that there were "military and artillery pieces" stationed in Benedict. This assertion on the part of the British commander is not controverted by Dorsey.—(See Clement Dorsey's conversation with the commander and herewith filed.) The facts as contained in the above recited documents go conclusively to the support of Cusick's testimony in relation to the companies of the United States being stationed in Benedict.

The most open village, if resolutely defended, will cost many men before its fall; the village of Benedict being located in an open plain, and situated immediately on the banks of the Patuxent river—from its peculiar localities, surrounded by creeks and marshes, the frame buildings, so far as the working of artillery pieces, affording no shelter, could not have been maintained for one hour against a superior force. In the next place, an officer would have displayed a great want of military knowledge, in the disposition either of artillery or infantry, to have stationed there a military force, for any effective purpose, much less have attempted to oppose the landing of the enemy's troops without constructing some work of defence, behind which his men could find protection from the firing of the enemy's vessels

of war. The conclusion seems to be irresistible, from these facts and circumstances, that the situation of our troops absolutely required the erection of a fortification. That such an entrenchment was thrown up there can be no doubt, for it is expressly stated that the tobacco was rolled out of the warehouse, and used as a fortification.—(See John L. Dorsey's affidavit.)

These are the material circumstances attending the destruction of the tobacco at the Benedict warehouse, and in the face of them can there be doubt as to the cause of the destruction? Was it not palpably the use made of this tobacco, its change from a pacific to a hostile character? Your petitioner ascribes the destruction of the tobacco to its use and occupation by the regulars of the United States service, and the preparation by them to repel the invasion by the British forces.—(See Cusick's testimony.) There is no principle better established than this, that if property is destroyed by one of the incidents to the situation and employment of our troops in which it is placed, the government is liable.

Was this tobacco in the Benedict warehouse destroyed and carried away by the British troops? In the affidavits of Zachariah Sothoron, John Moran and Austin Cusic, bearing date 11th March, 1824, and herewith filed, it is distinctly stated that the tobacco at the Benedict warehouse was destroyed and carried away by the enemy, in consequence of the use to which it was appropriated by our troops, when said forces landed in Benedict. The affiants say, "that there was considerable quantity, say four or five hundred hogsheads, of tobacco in said warehouse when said force landed;" again, these deponents say they saw the enemy "burning and otherwise destroying tobacco in the said town of Benedict, not more than thirty hogsheads remained in and about the warehouse."

Your petitioner will remark that the foregoing affidavit was found in the State department, and filed in a case pending before the board of commissioners, which assembled in the city of Washington, to adjust and examine into the validity of claims under the first article of the treaty of Ghent. According to the interpretation imposed upon this article, it was deemed unnecessary to shew how and in what manner the property was destroyed—it was merely necessary to establish the fact that the property was deported by the naval power of Great Britain, and within the waters of the United States, at the time of the ratifications of the treaty of peace. Hence the *omission* on the part of the affiants to state that the destruction or the carrying away of the tobacco was in consequence of its being used as a fortification for our troops—all that was required of the claimant was to show its destruction and deportation.

The conclusion that a portion of the army of the United States were stationed in Benedict, and that the tobacco was used as a fortification, and destroyed and carried away by the British forces, perfectly harmonizes with all testimony filed by your petitioner. The testimony of the deponents strengthen and support each other in all the positions assumed by your memorialist, as regards the destruction of the tobacco in the Benedict warehouse. The precedents in favor of the *claim now presented are full* and complete.—(See the reports of the

Committee of Claims, House of Representatives, No. 132, 29th Con- Congress, 1st session, and reference to the case of James Tongue and others. See 15th Congress, 1st session, No. 391 House reports, 15th Congress, 1st session, 420 House reports.)

Independently of the intrinsic merits of the claim of your memorialist, it is contended that the principle of indemnity has been recognized and established by the decision in the case of James F. Sothoron, passed at December session 1848, which is, in all its circumstances, far short of the present case. In that case the principle is laid down that personal property shall be paid for by the government, whenever it is converted to public use.—(See note, No. 2.)

In the view which that committee formed of this case from the evidence, there can be no doubt they considered all the *government responsibility* attaching, as soon as the occupation commenced by the American troops, and its consequent destruction by the enemy.—(See note, No. 3.)

That, in the great lapse of time, it is a difficult work to procure testimony connected with the events of the late war with Great Britain; that many persons who witnessed the scene of what was then called the "Chesapeake depredations" have died, and but few survive to give a full history of that day. It cannot be expected that these events should be sustained by the same definite and precise proof as that which may be required, according to the strict principles of a legal proceeding, but that your honorable bodies will consider the special circumstances of the case and grant compensation in conformity with the principles of equity and justice. The 5th section of the act of 1816 declares "that where any property impressed or taken by public authority, for the use or subsistence of the army during the late war, has been destroyed, lost or consumed, the owner of such property shall be paid the value thereof." This section is general, and embraces every description of property. The precedents established and referred to in this memorial proves that Congress did not intend that the act of 1816 should form the boundary of relief; on the contrary, that it considered the special circumstances of each case, and grant indemnification in conformity with the principles of equity and expediency. There can be nothing in this section that sanctions, by the remotest implication, the doctrine that compensation should not be granted in all cases where property has been used for belligerent purposes, and offensive operations.

The change of our amicable relations with a foreign power works a change in civil government, and destroys many of the securities by which we hold our property.

Your petitioner further states that the evidence of this tobacco being stored in the warehouse at Nottingham, and at Magruder's and Benedict, is fully established by the tobacco notes which were given by the inspectors, in obedience to the laws of Maryland regulating the inspection and safe keeping of the tobacco. By the act of Maryland passed in 1801, ch. 63, section 18, it is declared that the inspector or inspectors who shall pass any tobacco shall deliver as many notes, *under the hand* of the inspector or inspectors, to the owner and in his *name, as shall* be required, in which note or receipt shall be expressed

the place and time of reception, the mark of the warehouse, the number, and the gross, tare and nett weights for all tobacco inspected and passed; and also in the note shall be expressed whether of the first or second quality, the first quality to consist of tobacco clear of and unmixed with trash; and the said notes shall be payable to the said owner or bearer, and shall be current and receivable in payment of all debts and contracts for tobacco, or judgments and decrees on contracts for tobacco, according to the terms and intention of the contract, judgment or decree, (as the case may be,) and shall be *transferable* from one person to another, and shall be paid, upon demand, by the inspector or inspectors who signed the same.—(See the notes and manifest.)

Section 26 provides a penalty for forging manifests or notes.

Section 39 declares that inspectors "are declared to be answerable to the owners of any notes mentioned and described in such manifest, so far as to produce the same hogshead or hogsheads of tobacco belonging to any owner."—(See Dorsey's Laws of Maryland, page 453, vol. 1.

Your memorialist prays such relief in the premises as may be fair and reasonable.

NOTE No. 1.—See Brigadier General Winder's letter to Major Biscoe, and herewith filed; also, General Winder's letter bearing date 27th July, 1814, to the Secretary of War, in which he says that Col. Bowen's Regiment, 300 strong, and a detachment of regulars under the command of Lieut. Col. Scott, were stationed at Nottingham.—(See Niles' Register, vol. 7, his approaching the town, (Nottingham,) a few shots were exchanged between the boats and page 283; also, Admiral Cockburn's official report to Admiral Cockrane, in which he gives a detailed account of his naval operations on the waters of the Pautuxent.) He says "that upon some of the enemy's cavalry."

NOTE No. 2.—See Senate report No. 129, 30th Congress, 1st session; House of Representatives report 57. The report of the Senate states "that it is difficult to draw a distinction, in equity, *between a claim for loss of buildings and for the personal property they contain.*"

NOTE No. 3.—See the case of John S. Stiles, adjudicated in the 27th Congress, 2d session. He claimed indemnity for vessels sunk for the defence of the city of Baltimore in 1814. The Judiciary Committee of the Senate say "that it is the duty of the government to make compensation for them and the damages which their owners had sustained." An act passed for his relief—see vol. 6 United States Statutes at Large, page 126—also the act for the relief of sundry citizens of Baltimore for the sinking of vessels at the mouth of the harbor of Baltimore.—(See vol. 6 United States Statutes at Large, page 265.)

A manifest of tobacco, as shown by the accompanying notes, in the warehouse at Magruder's ferry and at Benedict, upon the Patuxent river, belonging to George W. Biscoe, viz:

At Magruder's warehouse.

H. W.—292	1,188—105	1,083
H. W.—293	1,162—108	1,054
T. W.—371	1,085—108	977
B. C.—183	982—111	871
J. T. W.—382	1,025—100	925
J. L.— 13	931—100	831
C. P.—317	900—100	800
J. T. W.—210	*1,215—104*	1,111

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 53.

JOHN SHAW.

[To accompany bill H. R. No. 657.]

JANUARY 10, 1857.

Mr. SAPP from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of John Shaw, respectfully report:

The memorialist, during the war of 1812, received from Governor Howard, of the Territory of Missouri, an appointment to act as scout or spy upon the movements of the enemy, which consisted of Indians and a portion of the British forces, upon the Mississippi frontier from near above St. Louis, upon both sides of said river, for a distance of 250 miles. The object of this service was to keep the companies of mounted rangers, ordered by the United States government to various points on the said frontier, constantly posted as to the various movements of the hostile Indians. The memorialist was selected for this duty on account of his great skill as a hunter having made him more familiar with the wilds than any other man in that country, and possessed him with powers of endurance which were invaluable for such a service, as also because he was thoroughly acquainted with the Indians, their manners and customs. The discharge of this duty involved great labor, immense risks, and excessive fatigue. It lasted for near three years—from the summer of 1812 to the spring of 1815—during which time the memorialist performed some of the most heroic deeds of daring and extraordinary services that could well be conceived. His life was in constant danger. At times, there being no ferry-boats, he was compelled to swim his horse after his canoe in order that he might ride him across the small streams. At other times he would travel overland to various settlements in Illinois and Missouri, to discover war parties who were constantly committing depredations. Conveying information of their whereabouts to the troops, he would invariably accompany the detachment which went in their pursuit, and take a hand in any engagement which might ensue. At one time he accompanied a squadron as a spy as far up as Rock island. The committee might go into further details of this memorialist's service, but they do not deem it necessary. It is sufficient to say that the

evidence fully establishes that he performed great and eminent services and that he never got paid for them.

The memorialist stands high in Wisconsin, the State of his present residence. Its legislature has passed resolutions memorializing Congress to grant him some relief, which are herewith appended. The history of the State makes honorable mention of him as an early pioneer of its greatness. The Historical Society of the State petition for his relief. In fact, the strongest evidences are afforded not only of the value of his services, but of his great merit as one of the first settlers of the west.

It appears that the memorialist never was paid a cent for his services as a scout and spy, or for any of the extraordinary duties which he performed, and which were the subject of special appointment. Besides this, he makes oath that he spent out of his own pocket $1,700 for horses, arms, ammunition, &c., not one cent of which was ever reimbursed him. He relied upon the governor of Missouri who appointed him, to obtain him such a consideration as what he had done was worth; for the governor had promised him that when he could acquaint the department at Washington with the facts, and the estimate which he placed upon the memorialist's service, the government would immediately compensate him. But unfortunately the governor died before he could fulfil his promise, and the memorialist has to this day remained unpaid. Concluding what he had engaged to do under appointment of the governor of the Territory of Missouri, he pursued his life as a pioneer and hunter in the wilds of the west. Becoming at one time well off, from the advantages which presented themselves in the opening up to settlement of the country of which he was so early a settler, no necessity pressed him to urge his claim against the government. Now he is poor, old, and blind, and prays that what has been so long due him may be given him to smooth his path to the grave. The committee think that the governor of the Territory, being an agent for the general government, had it within his discretion to employ the necessary services of such a man as the memorialist, and that the United States should pay him a reasonable consideration for the same. A bill is accordingly reported.

MEMORIAL TO CONGRESS IN BEHALF OF THE CLAIMS OF COLONEL JOHN SHAW, OF MARQUETTE COUNTY, WISCONSIN.

To the honorable the Senate and House of Representatives in Congress assembled:

The memorial of the legislature of the State of Wisconsin respectfully represents: That your memorialists have learned that their venerable fellow-citizen, Colonel John Shaw, has made application to Congress for pay for three years' services, during the entire war of 1812–'15, on the frontiers of Missouri and Illinois, as a spy or scout, say from the outbreak of the Indians in that region in the spring of 1812, till the news of peace reached the northwestern frontiers in the

spring of 1815, and also a claim of $13,684 93 for losses sustained to that amount during said war, in consequence of furnishing the Missouri and Illinois Rangers with various kinds of supplies necessary for mounted rangers; that said rangers not getting their pay till after they were disbanded and scattered to their several homes and elsewhere, Colonel Shaw failed to receive his just dues from them to the amount above mentioned; that said losses sustained by his patriotic efforts to serve his country in her day of need plunged him into embarrasments from which it required several years to extricate himself. Your memorialists further represent that Colonel Shaw bears among his fellow-citizens a high and unblemished character for worth, integrity, and enterprise, and none who know him doubt his statements as to his services, or the losses he represents himself to have sustained; and now in his declining years, having nearly attained the age of seventy-four, and so nearly blind as to be incapacitated for any manual labor, he really needs all that is justly due from his country. A statement of his services may be found in the *Second Annual Report and Collections of the State Historical Society of Wisconsin*, which statement, your memorialists are satisfactorily informed, has been thoroughly tested by the officers of that society, and found to be worthy of the fullest confidence and belief. Your memorialists therefore respectfully ask your honorable body to give to the claims of Colonel John Shaw that careful attention and examination which they are well persuaded they justly deserve.

JOSHUA STARK,
Speaker pro tempore of the Assembly.
B. G. GILL,
President pro tempore of the Senate.

Approved October 4, 1856.

STATE OF WISCONSIN, } ss.
Secretary's office.

The secretary of state of the State of Wisconsin does hereby certify that the foregoing act has been compared with the original enrolled act deposited in this office, and that the same is a true and correct copy thereof and of the whole of such original.

In witness whereof, I have hereunto set my hand and affixed the great seal of the State, at the Capitol, in Madison, this 7th day of October, 1856. [L. S.]

JOHN W. HUNT,
Assistant Secretary of State.

Resolved, By the senate, (the assembly concurring,) that the governor be requested to forward copies of the memorial to our senators and representatives in Congress, in relation to the claims of Colonel John Shaw, who are hereby solicited to use their best endeavors to obtain from Congress favorable action on said memorial.

Attest:

BYRON PAYNE,
Chief Clerk of Senate.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 54.

RETURN OF CERTAIN ARMS TO THE STATE OF TENNESSEE.

[To accompany bill H. R. No. 658.]

JANUARY 10, 1857.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of George W. Jones, one of the representatives in Congress from the State of Tennessee, on behalf of said State, praying a substitution to it of a certain number of arms, in lieu of others belonging to said State, issued by it to the Tennessee volunteers in the Mexican war, which were never returned, respectfully report:

The committee direct the attention of the House to the following letter from the Chief of the Bureau of Ordnance, which presents the case in a proper light.

ORDNANCE OFFICE,
Washington, October 10, 1856.

SIR: The papers left at the War Department by General Allison, adjutant general of Tennessee, relating to a claim of the State for arms furnished from the State arsenal to volunteers in the United States service during the Mexican war, and not returned to the State, which papers were referred to this office, have been examined in connexion with such of the records of the office as furnish any information on the subject.

That examination seems to establish the following facts, viz: The State of Tennessee issued to volunteers called into the service of the United States during the Mexican war—

1,086 muskets and accoutrements,
179 Hall's rifles and accoutrements,
10 rifles and accoutrements;

and the volunteers, thus supplied by the State, did not call for or receive their arms and accoutrements from the United States arsenals, as they had a right to do by the regulations for arming the militia called into the United States service. When mustered out of service, these volunteers turned in the following arms and accoutrements, which were sent to the United States arsenal at Baton Rouge: 291 muskets, 280 cartridge boxes, 275 cartridge-box belts, 238 bayonet scabbards,

186 bayonet-scabbard belts, 29 waist belts, 9 brushes and picks, 8 gun-slings.

What became of the rest of their arms and accoutrements cannot be ascertained by me, inasmuch as the State arms were not a subject for accountability to this office, and no returns of them were received here. There is no evidence that any portion of them was returned to the State, and the claim states that none were so returned. If these volunteers were held to the same accountability, while in the United States service, for their arms and accoutrements, as those who were armed and equipped by the general government, all deficiencies not resulting from unavoidable loss or accident in service were charged against their pay. Whether any distinction was made, in this respect, between volunteers armed and equipped by the United States and these Tennessee volunteers, I have not the means of ascertaining.

The entire evidence that can be found bearing on the subject seems to present an equitable claim by the State of Tennessee on the United States for the return to the State arsenal, at Nashville, of the same number and kind of arms and accoutrements as were furnished to the volunteers in the United States service by the State. The case, however, is one of equity solely, and the executive officers have no authority to adjust it. That will require legislative action, which, in my opinion, may with propriety be recommended. The papers left by General Allison are returned herewith.

Very respectfully, your obedient servant,

H. K. CRAIG,
Colonel of Ordnance.

Hon. JEFFERSON DAVIS,
Secretary of War.

The committee agree with the Chief of the Bureau of Ordnance that the claim of the State of Tennessee against the general government is an equitable one, and they accordingly report the accompanying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 55.

LORENZO D. OATMAN.

JANUARY 10, 1857.—Laid upon the table and ordered to be printed.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Lorenzo D. Oatman, of California, praying an appropriation to enable him to rescue his sister, who is a captive of the Mohave tribe of Indians, respectfully report:

That since the presentation of the memorial to the House the sister of the memorialist has been rescued. They therefore ask to be discharged from the further consideration of the same.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT. No. 56.

MAJOR RICHARD B. ALEXANDER.

[To accompany bill H. R. No. 609.]

JANUARY 9, 1857.

Mr. QUITMAN, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred House bill No. 609, *for the relief of Major R. B. Alexander, report:*

The evidence establishes that Major R. B. Alexander, of the 1st regiment of Tennessee volunteers in the war with Mexico, was severely wounded in the battle of Monterey, in consequence of which he was prevented from marching with his regiment when it was ordered to proceed to Vera Cruz. After his recovery he proceeded to join his regiment by the way of Brazos St. Iago. At the latter place he was obliged, by order of General Worth, then in command there, on account of deficiency of transportation, to leave his horse and mule in charge of Quartermaster Hill, under an engagement that they should be forwarded to him. Whether forwarded or not is not known; but it appears they never were received by Major Alexander.

The government, having thus failed to furnish to a field officer, on a duty which required him to embark on sea, the means of transportation for his necessary horses, is liable to pay for their loss. The value of the animals thus lost is proven to be two hundred and fifty dollars. The committee, therefore, report back the bill with a recommendation that it do pass.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 57.

J. M. BENNETT.

JANUARY 10, 1857—Laid upon the table, and ordered to be printed.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of J. M. Bennett, of the county of Bexar, Texas, respectfully report:

The memorial of the petitioner sets forth, that, by reason of the failure of the general government to protect his property against the depredations of hostile Indians on the Texan frontier, he had stolen from him by said Indians certain horses, mules, and ponies belonging to him, amounting, in the aggregate, to fifty-five, which he values at five thousand nine hundred and seventy dollars. Without referring to the principle involved in the case, the committee find no evidence accompanying the memorial to sustain the facts alleged by the petitioner; and they therefore ask to be discharged from the further consideration of the same.

34TH CONGRESS. 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT. No. 58.

JEDEDIAH GRAY.

JANUARY 10, 1857.—Laid upon the table, and ordered to be printed.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Jedediah Gray, respectfully report:

That by reason of injuries received whilst in the ordnance service as a carriage maker, in the year 1829, he was placed upon the invalid pension roll in 1849. He prays Congress to grant him a back pension, dating from the period of his injury to the beginning of his present pension. The committee see no reason why the present policy of the government—beginning pensions from the date of the completion of the proof upon which the pension is allowed—should be changed. They therefore ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 59.

OFFICERS AND SOLDIERS OF THE ARMY ON BOARD THE STEAMSHIPS "WINFIELD SCOTT" AND "SAN FRANCISCO."

[To accompany S. bill No. 103.]

JANUARY 10, 1857.

Mr. DENVER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the bill of the Senate, No. 103, *for the relief of the officers and soldiers of the United States army who sustained loss by the disasters to the steamships "Winfield Scott" and "San Francisco," respectfully report:*

The committee at the last session of Congress reported on the memorial of S. L. Fremont, late a lieutenant in the army, who was on board of the steamer San Francisco at the time she was lost, and as the said Fremont is one of the proposed beneficiaries of this bill, the committee direct the attention of the House to the report made by them on his memorial.

IN THE HOUSE OF REPRESENTATIVES, *May* 23, 1856.

Mr. DENVER, from the Committee on Military Affairs, made the following report:

The Committee on Military Affairs, to whom was referred the memorial of S. L. Fremont, late a lieutenant in the 3d *artillery, U. S. A., respectfully report:*

The memorialist was one of the officers of the army who was on board of the ill-fated steamer San Francisco, bound to his post of duty, at the time she was wrecked. Accompanying him was his family, for the accommodation of which, during his long tour of duty, he was carrying with him what he alleges was a necessary amount of household furniture, which, with their baggage and his own, as well as his books, &c., lost by the wreck of the steamer, he estimates to be worth $2,280. This amount he now claims from the government, on the

ground that the vessel was unseaworthy, and that by transporting him and his family on an unseaworthy vessel, it is obligated for whatever losses may, for that reason, to him have accrued. He contends that he was bound to obey the orders of the government, without reference to the condition of the transport.

The memorialist furnishes no evidence of the value or the necessity of the articles that he was carrying with him, and which were lost, other than his own estimate, nor any proof of the unseaworthiness of the vessel (which was at that time new and was on her first trip) other than his own statement. The committee, however, think that if, in the opinion of the memorialist, at the time of his departure, the steamer was unseaworthy, there was no rule of the service obligating him to take his family with him, or to risk the safety of any more of his personal property or baggage than was actually necessary for his own use; and on that account, if he did choose to risk the safety of his family, prudence would at least have dictated to him the propriety of insuring the large amount of personal property to reimburse the loss of which he now claims $2,280. The committee see no reason why the government should become the insurer of the property of an officer, a precedent of which it would be establishing by the allowance of this claim. The committee discover that Congress, on the 28th of March, 1854, passed an act allowing to each of the sufferers by said accident eight months' pay and allowance, under which act the memorialist received $864 20, a sum which the committee think is ample enough to compensate him for the necessary losses and inconveniences of the accident.

The committee, as they before remark, are unwilling to compensate officers for losses incurred by reason of the destruction of their own or their family's private baggage or personal property, because there is no propriety in making the government the insurer of the same, when, like all other citizens, the advantages of the insurance offices are open to them to protect them against lossess. Independent of this consideration, there are other reasons which present themselves with great force against the admission of the principle which this claim seeks to establish, and they therefore ask to be discharged from the further consideration of the memorial.

It will be seen by the preceding report that the committee rejected the prayer of Lieutenant Fremont, on the ground that the amount received by him under the act of the 28th of March, 1854, was, in the opinion of the committee, sufficient to compensate him for the necessary losses which he incurred by the said disaster; and that, beyond that limit, the committee saw no reason why the United States should become the insurer of the private property of an officer and his family having no connexion with the discharge of the duties of his position. The committee see no reason why it should depart from that principle, which, in their opinion, is eminently just and sound. The Senate bill makes no reference to the previous relief which the sufferers by the San Francisco have received at the hands of Congress, though it limits the extent of relief it proposes to payment for such property only as was necessary and proper for, and is usually carried by, such officers and sol-

diers while on the voyage. The committee think that the principle laid down in the Fremont report should be adhered to. They therefore propose to report a substitute for the Senate bill, substituting the words "military stores, accoutrements, clothing, and supplies as were actually necessary for the discharge of the duties of said officers and soldiers," in lieu of the words "property, &c.," a liberal construction of which would defeat the intention of the act; and they also propose a proviso to the effect that the amount received by each officer and soldier under the act of March 28, 1854, be deducted from such amount as may be ascertained to cover the losses for military stores, clothing, and supplies as were actually necessary, &c., the balance to be paid to them respectively. This would place the sufferers on the San Francisco and Winfield Scott on an equal footing; as those who suffered by the disaster to the latter, unlike those who were on the former, received no relief whatever, the act of March 18, 1854, having been confined to those who were on board the San Francisco.

The committee propose to embrace in their substitute the case of Captain L. C. Hunt, who, on his way to join his command in California, lost everything he had with him by the burning of the steamer City of Pittsburg. The committee's substitute would merely place him on the same footing with the sufferers on the San Francisco and Winfield Scott, subjecting the extent of relief to be afforded him to the same limits and restrictions proposed to the others.

The committee have had brought to their attention the case of Major Austin, of the third artillery, who was to have gone out on the San Francisco, and had all his baggage on board for that purpose, but, by some unavoidable accident, was prevented from doing so. His baggage was all lost. The committee propose that he shall also receive the same extent of relief as the others.

The committee accordingly report the accompanying substitute for the Senate's bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 60.

OLIVER P. HOVEY.

[To accompany bill H. R. No. 659.]

JANUARY 10, 1857.

Mr. ZOLLICOFFER, from the Committee on Territories, made the following

REPORT.

The Committee on Territories have examined the memorial and affidavit of Oliver P. Hovey and the accompanying affidavits, from which it appears that on the 7th October, 1846, the said Hovey was employed by Charles Bent (then acting governor of the Territory of New Mexico) to print the code of laws for New Mexico which was promulgated by General Kearny, who, under instructions from the War Department, had established a civil government in New Mexico in that year. It appears that the said Hovey executed said printing, and delivered five hundred copies of the laws for the use of the government, according to contract, for which it had been agreed that he should be paid a reasonable compensation. That his bill of charges for the work amounted to $1,705, but that Governor Bent having died before he (Hovey) had delivered but one hundred copies of the work, he had received but one hundred and fifty dollars of the amount, and has not since been able to prevail upon the government of New Mexico to pay him the balance, though he has repeatedly applied for the same. The petitioner prays that the remaining fifteen hundred and fifty-five dollars ($1,555) be paid to him out of the treasury of the United States.

On examining the charges at the first session of this Congress, in the absence of testimony showing that the charges were reasonable, the committee asked to be discharged from the further consideration of the memorial. But the affidavits of practical printers, resident in New Mexico, and of the chief justice of the supreme court of New Mexico, who supervised and corrected for the press the English part of this printing, together with the certificate of the Secretary of the Territory, all of which are hereto appended, (marked A,) which have since been submitted, satisfy the committee that the charges, under the then existing state of things in New Mexico, are reasonable, and ought long since to have been paid. The committee, therefore, beg leave to report the accompanying bill, and to ask its favorable consideration.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No 61.

KATHARINE K. RUSSELL.

[To accompany bill H. R. No. 660.]

JANUARY 10, 1857.

Mr. DICKSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Katharine K. Russell, widow of Dr. J. P. Russell, deceased, submit the following report:

That it appears from the testimony of Dr. George H. Batchelder and Brevet Colonel Harvey Brown that the petitioner's husband, who was a surgeon's mate during the war of 1812, and until the time of his death, which occurred in 1849, was, with said affiants, ordered to inspect the work on Bedloe's island for the purpose of establishing a depot at that post.

That the weather was inclement, and the subterranean vaults, in two or three of which they were obliged to enter and remain for a considerable time, were damp and unwholesome. The day after their visit, Dr. Russell, who had previously been in feeble health, was taken sick, which sickness terminated fatally in the course of ten days thereafter, and that the inciting cause of his death was his tour of duty of inspection on Bedloe's island.

In view of the above facts, and in consideration of the long and valuable services of petitioner's husband, who, it also appears, served in the Florida war, the committee report a bill, and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 62.

HENRY SANFORD.

[To accompany bill H. R. No. 661.]

JANUARY 10, 1857.

Mr. PIKE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Henry Sanford for a pension, have examined the case, and report:

That the evidence in this case shows that the said Henry Sanford enlisted in December, 1812, in a company of volunteers commanded by Captain John Commins, and marched to the eastern frontier of the then district of Maine; that he was frequently on duty during the night time, and through the winter, watching for smugglers.

Near the close of the winter he was taken sick while in the service; was very sick for about two months, after which he partially recovered so as to occasionally be on duty and attend roll-call, and was discharged at Eastport in December, 1813. It further appears that soon after his return home he was taken down sick again by a disorder in the back and kidneys; and after about six months he measurably recovered so as to in part attend to his business as a farmer for a time, but for the last twenty years has been entirely prostrated, and for more than sixteen years has been unable to stand upon his feet. These facts are substantiated by the affidavits of two of his fellow-soldiers who were with him in the United States service in 1812 and 1813, and have been well acquainted with him since, now reside near him, and have frequently visited him during his confinement; and his family physician also testifies that he has frequently visited him professionally during thirty-nine years last past, and that said Sanford has been entirely prostrated, has had a running sore on his back for twenty years, and that he has no doubt his prostration is in consequence of his exposure as aforesaid. Your committee therefore report a bill for his relief, and recommend its passage.

ITH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 63.

ANDREW R. POTTS.

JANUARY 10, 1857.—Laid on the table and ordered to be printed.

r. QUITMAN, from the Committee on Military Affairs, submitted the following

REPORT.

he Committee on Military Affairs, to whom was referred the memorial of Andrew R. Potts, respectfully report:

The memorialist was, on the 16th of August, 1847, appointed an sistant commissary of subsistence, with the rank of captain, (volunter service,) and served as such until the close of the war with exico.

At that time, being on duty with no particular regiment of volunters, Captain Potts was not mustered out of service under the general ders of June 8 and July 6, 1848; but on the 7th of July an order ee order herewith printed) was issued applying to his case. As aptain Potts was neither in New Mexico nor California, and was ot employed at the principal depots, the exceptions to the effect of e order, he was discharged from service on the 20th of July, 1848, d was so considered by the commissary general of subsistence, and further orders were given to him by the commissary general.

Captain Potts having received orders from the local commander on e Rio Grande to report in person to the commissary general, obeyed at order and reported on the 29th of September, 1848; and the commissary general, in consequence of that order, requested that the term service of Captain Potts might be extended from the 20th of July ntil the 30th of September, 1848, to enable him to receive pay for e time consumed in obeying such order. This request was granted, d by the letter of the adjutant general of December 23d, Captain otts was informed that the term of service was extended to the 30th eptember, 1848.

Captain Potts now claims pay up to the 25th of December, the time which he received the above letter of the adjutant general, and hich was within a few days of the final settlement of his accounts. he committee think that Captain Potts was discharged by the genel orders, herewith annexed, on the 20th of July; that the extension f the period of discharge to the 30th of September, 1848, was a mere atter of favor to him, which gives no claim for pay to the 20th of ecember. Nor do the committee recognize that he has any claim by eason of his detention here in settling his accounts. That was a

matter affecting his personal interests as well as those of the government. The loss of time in doing that, gives no additional strength to his claim for compensation. The committee, therefore, ask to be discharged from the further consideration of the memorial.

GENERAL ORDERS, No. 36.

WAR DEPARTMENT,
Adjutant General's Office, Washington, July 7, 1848.

Pursuant to law, the President directs that the general officers appointed under the first section of the act of March 3, 1847; the general and staff officers "*provided for the organization of the volunteer forces brought into the service of the United States*" under the acts of Congress approved June 18, 1846, and June 26, 1846, and the additional paymasters appointed under the act of July 5, 1838, be honorably discharged the service of the United States from and after the 20th day of July, 1848.

And the President further directs that the general, staff, and regimental officers, (volunteer service,) who may be absent from their commands, and such officers belonging to the "additional military force" raised under the act of February 11, 1847, as may not be present with their respective regiments, battalions, or companies, at the places of rendezvous indicated in "General Orders" No. 25, of June 8, paragraph 10, and "General Orders" No. 35, of July 6, be considered as discharged the service of the United States on the said 30th day of July, 1848—with the exceptions herein mentioned, to wit:

The major general charged with the withdrawal of the troops from Mexico, the brigadier general, and the officers of the quartermaster's commissary's, and medical departments, (volunteer service,) and additional paymasters, now in New Mexico and California, or employed at principal depots, who are unavoidably continued in service until they can be duly notified of their discharge. The chiefs of staff will report, for the information of the Secretary of War, the names of such officers as cannot be discharged on the 20th July.

By order of the Secretary of War:

R. JONES, *Adjutant General.*

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 64.

DANIEL COIT—CHILDREN OF

[To accompany bill H. R. No. 662.]

JANUARY 10, 1857.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the children of Daniel Coit, a revolutionary soldier, praying for the arrears of pension due their father, and for the land granted to other soldiers for their services and sacrifices in the war of the revolution, report:

That from well authenticated facts, and the history of the life of the said ancestor of the petitioners in manuscript book, written by himself in the time of the occurrences and events to which it relates, and with apparent truthfulness, which, when compared with the history of those times, are found to agree, it satisfactorily appears to your committee that the said Daniel Coit enlisted for six months in a regiment of Massachusetts militia, destined for the southward, in the company commanded by Captain Nobles, in 1776, and marched to Danville; thence to Fairfield, Connecticut; thence to Horse Neck; thence to Volentine Hill; thence to White Plains, and was actively engaged in the battle at White Plains. That the same fall he enlisted again into an independent artillery company, raised in Sheffield; and the next season the said company turned out, leaving their artillery, and mounting on horseback, with small arms, were ordered to the northward to Fort Edward; from thence to Vermont with Colonel Seth Warner, to oppose the progress of the approaching army of General Burgoyne, whose army capitulated at Saratoga on the 17th day of October, 1777; and he and his company, being no longer needed, returned to their homes. That in the season of 1779, he was again called out by draft, and ordered to Fairfield, Connecticut, which was burnt by the British, where he remained one month, which ended his military services. The duration of his services in the aggregate covers about two years, but at no one time a continuous service of nine months, which could avail him under the first pension act of March 18, 1818. And before there was time for him to apply for the pension

due him under the act of June 7, 1832, he died, to wit, on the 4th day of July, 1832. Under which act there was due him at his death one year and four months. It appears his widow only survived him a few weeks; and that four children now survive them, who are justly entitled to the arrears of pension before mentioned. And, inasmuch as the ancestor of claimants rendered important services, and there are no minor children to take under the 8th section of the act of Congress, approved March 3, 1855, and there are children of said soldier living who are old and needy, they recommend that the benefits of said 8th section be applied to them, with said arrears, and they report a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 65.

JAMES KIP—CHILDREN OF.

[To accompany bill H. R. No. 663.]

JANUARY 10, 1857.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of John L. Kip, on behalf of himself and others, the heirs of James Kip, a soldier of the revolution, asking that they be allowed the pension to which he was entitled, report:

That they have had the same under consideration, and find, from the evidence submitted to them, that the said James Kip served as a soldier in the army of the revolution, in the New York State troops, for the period of about five years, from February 6, 1777, to January, 1782, and was appointed a sergeant in October, 1778.

The fact of his service, although imperfectly proved at the time of his application for a pension under the act of June 7, 1832, has been since clearly and satisfactorily established by documentary evidence submitted to the committee, furnished by the certificate of the secretary of state of the State of New York from the military register, showing his service as a soldier for the period above stated.

The evidence thus furnished would clearly have entitled the said James Kip to a pension under the said act of 1832, and it seems to have been disallowed principally for the reason that it did not appear, as he served most of the time as an artificer in the armory, but that it was civil and not military service. It is sufficient to say, in answer to this, that the evidence since submitted shows, satisfactorily to your committee, that it was military service, and as alleged, and as your committee believe, of a very meritorious character; it is claimed that for his prompt and efficient services in preventing the surprise and capture, in his quarters, of General Baron de Steuben, he was promoted, and awarded a lieutenant's commission; which, it is also alleged, is lost or destroyed, and cannot be produced, but which is still in the recollection of the members of the family. While your committee, from the credibility and high character of the witnesses, have no reason to doubt the importance of his services, yet, as they find no record evidence of the fact of his actually holding the commission of lieutenant, and the further fact that his name was still

continued on the military roll of the New York troops, have c cluded that the evidence is not sufficient to warrant a pension for higher grade of service. They have no doubt, however, that he entitled to the pension for the service as stated on the New York ro

The said James Kip died on the 19th day of November, 1834, a making his application under the act of 1832. The ground on wl the application was then refused being now removed, and it appear that the said James was for many years supported and taken car by the petitioners, your committee think they should be granted pension to which the said James Kip was entitled at the time of decease.

They therefore ask leave to introduce a bill for that purpose.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 66.

ROBERT W. CAULK.

[To accompany bill H. R. No. 664.]

JANUARY 10, 1857.

Mr. WELCH, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Robert W. Caulk, have had the same under consideration, and submit the following report:

The petitioner states that he was a first-class fireman on board the United States steam-frigate Mississippi during the late war with the republic of Mexico; that while acting in the line of his duty at the bombardment of Vera Cruz he received a wound causing a rupture, and resulting in total disability; that before making application for an invalid pension, he established the fact of having been so disabled, and was granted a pension at the rate of six dollars per month. He represents that he has a family depending upon him for support, and that he is totally disabled, in consequence of said injury, from performing manual labor, and has no means whatever, except the small pension granted him, as above stated, which is inadequate to afford him a support. He asks that his pension may be increased to twenty dollars per month.

The facts set forth in the petition are certified by the officers on duty at the navy yard in Washington, who strongly appeal to the liberality of Congress in behalf of the petitioner.

Your committee, convinced that the case is meritorious, and that relief should be extended to the petitioner, ask leave to report the accompanying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 67.

DANIEL DRAIN.

[To accompany bill H. R. No. 665.]

JANUARY 10, 1857.

Mr. WELCH, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Daniel Drain, having had the same under consideration, beg leave to report:

It appears on examination of the evidence before the committee, that the petitioner entered the service of the United States as private in Captain Follett's company, at Plattsburg, New York, on or about the 8th day of February, 1813, in the 11th regiment of infantry, commanded by Colonel Isaac Clark, and served until some time in November the same year, when he was taken sick with fever; and while in feeble health he was ordered to unload some heavy baggage from a wagon, by which he received an injury and was sent to the hospital, and on his way he met his captain, who ordered him to return home and remain there until he recovered, or was called for, which he did, but never was mustered in the service again, but received an honorable discharge. In consequence of the injury received and exposure to the weather, he was not only unfit for the service, but was entirely disabled from obtaining his support from manual labor since his discharge.

The above statement is corroborated by the affidavits of six respectable persons, duly authenticated, who were well acquainted with the petitioner before he entered the service, and after he returned home. All concur in saying that the petitioner is, and has been, totally disabled, and verily believes his disability is the result of injuries received, and from diseases contracted, while in the service of his country and in the line of his duty.

The committee, after carefully examining all the evidence in the case, are of opinion that relief should be granted, and recommend the passage of the accompanying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 68.

REUBEN J. CHAMPION.

[To accompany bill H. R. No. 666.]

JANUARY 10, 1857.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom were referred the papers in the case of Reuben J. Champion, submit the following report:

The petitioner states in his petition, under oath, that he is the only child of Reuben and Rhoda H. Champion, formerly of East Haddam, Connecticut, and that his father during his life frequently related the history of his revolutionary services, and stated that he was assistant commissary under Israel Champion, both of whom were under Colonel Henry Champion, commissary general, and that his father served from some time about the *middle of the war*, as assistant commissary, until *the close of the same;* that his father applied for a pension, but from poverty and infirmity did not succeed, and that he died in March, 1838; that his father and mother were married in 1782, and that his mother died on the 3d January, 1852.

The claimant, in support of his claim, exhibits receipts and documents beginning in September, 1778, and running through a period of several years; also statements from the records of the comptroller's office of Connecticut, for service shown in the years 1780 and 1781, and copies from the Historical Society of Connecticut, showing him to have been in the service as assistant commissary for three or four years; also the copy of a letter dated August 27, 1798, and marked A, addressed to his father by Colonel Henry Champion, the commissary general, under whom he served, in which he states that "he, Reuben Champion, father of the claimant, served the greater part of the last war in the *commissary line*, and was wounded," &c.

The records from the secretary of state also show him to have been in service during the year 1779, making in all a mass of testimony sufficient to establish beyond the possibility of a doubt that Reuben Champion was several years assistant commissary in the Revolution. The marriage of Reuben Champion to Rhoda Hyde Jewitt is established by the records of the town clerk to have taken place on 12th November, 1782. *The objection to* allowance of the pension due, rests *upon the presumption that* Reuben Champion was a mere civil agent,

employed by the commissary general to receive beef and provisions for the army. The receipts filed by petitioner show him to have been in the receipt of beef and provision for the army from *purchasing commissaries;* but the idea that the commissary general should *commission* commissaries to *purchase* beef, &c., for the army, and then deliver them over to a *civil* agent to be dispensed to the soldiers, is one that your committee could not for a moment entertain.

If there are no resolves of the Continental Congress to the contrary, this process would be inconsistent with the very nature of things; but there were no remaining doubts on the minds of the committee. The certified copy from the secretary of the State of Connecticut of a petition filed in 1783 would relieve them of all difficulty. There he designates himself by his title, and the character of his service is also shown by the letters of Col. Henry Champion, commissary general, under whom he served.

The fact once admitted that Reuben Champion was an assistant commissary, and the proper length of service established, the pension is provided for by the law of 1832, and claimant's case should have been adjudicated and paid under the provisions of said act; and the marriage having taken place *prior* to the last period of his service, the proper pension should have have been meted out to the widow under the provisions of the act of July 4, 1836; or why pass such general acts for this purpose? The Pension Office says it is not satisfied that the petitioner was subject to military control, or, in other words, subject to "martial law." That the evidence proves the fact of his grade as *commissary* cannot be questioned, unless the records themselves are not to be relied upon.

Your committee therefore report a bill for his relief.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 69.

JANE VREELAND.

[To accompany bill H. R. No. 667.]

JANUARY 10, 1857.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom were referred the petition and papers in the case of Jane Vreeland, widow of Jacob Vreeland, have had the same under consideration, and beg leave to report:

That the application in this case is for a pension for the service of her said husband as lieutenant during the revolutionary war in the State of New Jersey. The widow states in her declaration, under oath, that her husband served as lieutenant under Captains Spier and Gerolamon, from 1778 to the end of the war, and was on duty as much as four months in each year, from 1778 to 1782, making in all one year and eight months. She details various skirmishes and battles in which her husband was engaged, which accord so much with the known history of the times, as to give great credibility to her statement. She produces several witnesses who were soldiers in the war of the Revolution, and who served under her husband, all of whom fully corroborate her statement, and who detail many of the particulars of their own service, as well as those of the service of the husband of said Jane Vreeland, (having been neighbors both during and since the war,) and who state the service with so much distinctness as to leave no doubt of the correctness of their testimony. A daughter of said Jane Vreeland states that she has frequently seen the commission and epaulets of her said father, and she describes the seal on his commission.

The records of New Jersey show a payment of interest to Jacob Vreeland, and the Pension Office shows that the captains under whom the widow states her husband served are found on its rolls. The fact that the marriage took place in March, 1778, is also proven in a very satisfactory manner by the testimony of those who saw the ceremony performed, and also by the ages of the children. The only objection to the allowance of this claim by the Pension Office appears to be the general character of the statement of the widow. (See letter January 21, 1845, filed in the case.)

How the statement of a claim by the widow of one who performed the service her husband did, after a lapse of near sixty years, could be made more in detail or more specific, would be very difficult, if not impossible. Your committee can recognise no validity in such an objection, and therefore report a bill for the relief of the petitioner.

ıTH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 70.

WILLIAM YORK—HEIRS OF

To accompany bill H. R. No. 669.

JANUARY 10, 1857.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the heirs of William York, ask leave to report:

That it appears that William York in his life-time petitioned Congress for relief, and that at the first session of the 26th Congress the ommittee on Revolutionary Pensions of the House of Representatives eported a bill allowing him a pension for one year's service as a capin in the line. That the bill did not pass at that session, however. hat William York died on July 14, 1837, leaving a widow, Ailsey ork, who also died on July 7, 1839. And that now the case is prented on the petition of Josiah C. York, his son, in behalf of himself id Margaret Lacey,(widow,) Letty Horse, Elizabeth Philpot,(widow,) id Delilah Philpot, (widow)—the only surviving children.

The original evidence presented, upon which the committee reported bill at the first session of the 26th Congress, consisted of the declaraon of William York and the affidavits of Colonel James Blair, a relutionary officer, and of Solomon Geren, a revolutionary pensioner, ho served under Captain William York, and of General John Brown.

On examining this evidence it appears that William York served different periods from the year 1777 to the fall of 1781, considera-y more than two years, as a captain of a troop of horse, under vaous commanding officers, and in different regiments.

In addition, however, to the declaration and affidavits upon which s based the action of the committee of the 26th Congress, there is w produced record proof from the rolls in the comptroller's office of rth Carolina, fully establishing more than two years' service.

The committee are of opinion that the children are entitled to the nsion, and herewith report a bill for their relief.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 71.

CAPTAIN THOMAS R. WHITE—WIDOW OF.

[To accompany bill H. R. No. 670.]

JANUARY 10, 1857.

Mr. FLORENCE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Elmira White, ask leave to submit the following report:

Your committee have carefully examined and considered the petition, papers, and evidence accompanying the same, and find that Thomas R. White entered the service a captain of volunteers, at twenty-three years of age, in good health and a robust constitution, in the month of December, 1812, and marched early in the spring of 1813 to the Canadian frontier, where he was taken sick with fever and ague and diarrhœa—diseases both prevalent and fatal with our troops in that campaign—and which so reduced him that he was obliged to leave the service in the most feeble condition of health. His barber, the nurse who attended him in his last sickness, and his attending physician, all testify that his disease was contracted while in the line of duty, and in consequence thereof he was disabled from any further service, almost entirely deprived of the performance of any sort of business by which to obtain a subsistence throughout the remnant of his days. He was honorably discharged from the service, lingered in feeble health, and died young, leaving a widow, the petitioner, who is still his widow, in needy circumstances, compelled to support herself and two young children, and who is now advanced in years.

Your committee can conceive little or no distinction between the soldier who falls by the hand of the enemy and the one who falls by a prevailing epidemic while in the line of his duty.

And your committee, from a view of the evidence in the case, and all the facts which have come to their knowledge, are of the opinion that this claim is highly meritorious, and that the prayer of the petitioner ought to be granted. They therefore report the accompanying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 72.

MILEAGE.—MINORITY REPORT.

JANUARY 15, 1857.

Mr. KELSEY, from the Committee on Mileage, submitted the following views of the minority:

The minority of the Committee on Mileage, dissenting from some of the views entertained by the majority of the committee, beg leave to submit the following

REPORT.

The Constitution of the United States provides that "the senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States." A strict construction of this language would seem to require the compensation of senators and representatives to be equal in amount. But at the time the Constitution was formed traveling was necessarily slow, fatiguing, and expensive; and much the hardest part of the duty of very many representatives was the performance of the journey to and from the seat of government to attend the sessions of Congress. In view of this state of things, the first Congress proceeded to enact a law fixing the compensation of senators and representatives. For the purpose of making the compensation paid to each senator and to each representative as nearly equal as possible, when compared with the time devoted by each to the public service and the expense necessarily incurred, the system of allowing mileage was adopted. The mileage was intended to compensate members for the time employed, as well as the expense incurred, in performing journeys that in many cases required several weeks of time.

The present rate of mileage was fixed in 1818, when railroads were unknown, and the navigation of our rivers and lakes by steam was in its infancy. The most safe and expeditious mode of traveling at that time was by the stage coach, which has now disappeared from the great thoroughfares of our country. Under this state of things the mileage allowed was probably no more than a fair compensation for the time and expense required to perform each journey. But this state of things no longer exists. One or two days is now sufficient to perform a journey that would then have required two or three weeks. And it cannot now be asked that compensation shall be given for the *time* required in traveling to attend the sessions, because, by the law passed at the last session, the *whole time* of each senator and repre-

sentative is paid for by the government. If the present mileage is retained, it makes really a vast difference in the compensation paid to members for their services. The pay of members has been increased because the expense of living has very largely increased since the pay was fixed in 1818. Why should not the mileage be reduced, when the expense of traveling has been so largely reduced within the same period of time?

The amount paid to members of the House and delegates for mileage at the first session of the 32d Congress was $166,494. At the second session of the same Congress the amount paid was $166,520. The amount paid at the first session of the 33d Congress was $181,968, and at the second session of that Congress it was $184,720. The amount paid at the first session of the present Congress was $191,156, being about $793 18 to each member and delegate. But this sum is very unequally divided. The delegates from Washington and Oregon Territories received $5,960 each. One member from California received $5,806, and the other received $5,682; while one member from Maryland received but $17 60, and two others from the same State received only $32 each. The *seven* delegates received $23,912 80, being an average of about $3,816 to each; while *thirty-seven* members received only $5,136 80, being an average of about $138 83 to each.

As the whole time of each senator, representative, and delegate is now paid for by the government, there can no longer be any good reason for continuing the present mileage, which makes so great inequality in the compensation of members, and draws from the treasury a much larger sum than is necessary for this branch of the public service. The mileage should be so adjusted as to cover the actual and necessary expenses incurred by senators and representatives in traveling to attend the sessions. If less than this is given, it will be unjust to members who reside at the greatest distance from the Capitol. If more than is necessary for this purpose shall be allowed, it gives the distant members greater compensation than those who reside near the Capitol.

The bill proposes to allow the present mileage for two hundred and fifty miles or under, and ten cents per mile for all distances over two hundred and fifty miles. This allowance will undoubtedly be sufficient in all cases, not only to pay the actual traveling expenses, but to defray the incidental expenses of preparing for the journey; and it will reduce the aggregate amount paid for mileage about $119,000 per session, compared with the amount paid at the first session of the present Congress.

The second section of the bill proposes to deduct twenty-five dollars per day from the pay of members for voluntary absence during the session. This proposition is so obviously just and proper, that no argument appears to be needed to sustain it. By the law, as it now stands, a member may be absent voluntarily every day of the session except the last, and still draw his pay for the recess and his mileage. The second section of the bill proposed by the minority will meet such a case as above supposed, and it will tend to secure the attendance of all the members during the entire session, except those who are compelled to be absent by reason of sickness. This section also has the approbation of the entire committee.

The minority of the committee do not agree upon all the details of the bill they have prepared; but they submit it to the House, so that the points upon which they do not agree may be decided by a vote of the House.

W. H. KELSEY,
J. H. WOODWORTH.

A BILL to amend an act entitled "An act to regulate the compensation of members of Congress," approved August 16, 1856.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, instead of the mileage now allowed by law, there shall be allowed and paid, in the manner now prescribed by law, to each senator, representative, and delegate in Congress, the sum of eight dollars for every twenty miles actually and necessarily traveled from his residence, by the nearest usually traveled route, in going to and returning from two sessions only of each Congress, *provided* the distance so traveled does not exceed two hundred and fifty miles. And when the distance traveled, as aforesaid, exceeds two hundred and fifty miles, ten cents per mile shall be allowed and paid for such excess.

SECTION 2. *And be it further enacted*, That there shall be deducted, in the manner now prescribed by law, in lieu of the deduction now authorized by law, from the compensation allowed to each senator, representative, and delegate, the sum of twenty-five dollars for each day that such senator, representative, or delegate shall be absent from the Senate or House, respectively, when the Senate or House shall be in session, unless such senator, representative, or delegate shall be absent from his seat by reason of the sickness of himself or some member of his family.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 73.

BREVET MAJOR H. L. KENDRICK.

[To accompany bill H. R. No. 711.]

JANUARY 16, 1857.

Mr. KNOWLTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of Major H. L. Kendrick, report:

The facts in this case are clearly and correctly set forth in the Senate report upon the claim, and it is therefore annexed hereto and made part of this report.

The committee report herewith a bill for the relief of the petitioner, and recommend its passage by the House.

IN THE SENATE OF THE UNITED STATES, APRIL 7, 1852.

Mr. BRODHEAD made the following report, to accompany bill S. No. 347.

The Committee of Claims, to whom was referred the memorial of Major H. L. Kendrick, report:

The facts in this case are clearly stated in the report made thereon at the last Congress. The petitioner asks a credit in the settlement of his accounts for $1,294 66 of public funds, which was stolen from his possession during its transportation from Puebla to Vera Cruz.

It is believed that Major Kendrick used all reasonable vigilance that the most prudent caution could suggest to protect the money, and that the loss can be in no way chargeable to the slighest negligence on his part.

The previous report is hereto annexed. The committee report a bill.

IN SENATE, JANUARY 28, 1850.

The Committee of Claims, to whom was referred the petition of Brevet Major H. L. Kendrick, report:

That the evidence seems to establish the following facts: Major Kendrick was ordered by General Worth, about the middle of June,

1848, to sell certain ordnance and ordnance stores, property of the United States, at Puebla, in Mexico. He made the sales, and was charged with the transportation of the money received (it being silver' to Vera Cruz. He put the money into wooden boxes, strongly made) and placed them on board two wagons, over which he placed a special guard; and the more effectually to insure the safety of the money, he ordered Corporal W. J. Dickson, who had been doing duty in the ordnance department, both at Puebla and on the march, in addition to the guard, to watch the specie wagons, and to sleep in one of them. While the command was at Jalapa, on the march to Vera Cruz, on the night of the 6th of July, 1848, one of the specie boxes was pried open, and $1,294 66 was stolen from it. On the same night said Dickson, who up to that time had sustained a trustworthy character, deserted the service under circumstances leaving no reasonable doubt of his having taken the money. It appears Major Kendrick was unable to obtain iron chests at Puebla for the transportation of the money, and was obliged to make use of the wooden boxes. The boxes were too large to place in the tent, and admit its use for other purposes. The wagons were placed only ten or twelve yards from the tent, and in full view of it. The special guard was at all times kept over them. Major Kendrick frequently visited the wagons, giving and repeating orders calculated to make the guard vigilant and watchful. He never left the camp except on duty, and never without calling the attention of Lieutenant Totten (the only subaltern in the company) and the guard to be particularly watchful of these wagons. He seems to have used all reasonable efforts for the apprehension of the thief and the recovery of the money. The said Dickson, prior to this act, had been deemed by the officers and non-commissioned officers of the company honest and faithful.

From all the evidence, the committee are of opinion that the money was actually stolen as alleged, and that the loss was not attributable to any neglect of duty or want of care on the part of the memorialist. They therefore report the accompanying bill for his relief.

FORT DEFIANCE, NEW MEXICO,
September 15, 1856.

SIR: I had the honor, last February, of addressing a letter to the chairman of the House Committee of Claims, before it was known here who that chairman was. Afterwards, (April 3, 1856,) when I became informed upon that point, I wrote to you.

As I have seen no notice in the congressional proceedings of the subject to which they refer, I fear they failed to reach you. I therefore venture to send you copies of them, together with oopies of testimony then sent, with perhaps one or two additional papers. I have other testimony which is included in that on the files of the Senate and in the office of the Second Comptroller. I presume, however, that what I send now will be sufficient, and I do not wish to trespass on your time to read more. The papers which I do enclose are sent

in order to save you the trouble of causing them to be sought for elsewhere.

It will be observed that the robbery occurred eight years ago; the delay, if protracted much longer, will, I fear, be used as an argument against the claim itself. You will observe, however, that the matter was before Congress soon after I sustained the loss, nor have I been idle since. But a seven years' residence in this country has given me little opportunity to urge it efficiently.

I now earnestly invoke your good offices in the case.

Very respectfully, your obedient servant,

H. L. KENDRICK,
Captain Second Artillery, and Brevet Major.

Hon. J. R. GIDDINGS, *or Chairman*
House Committee of Claims, Washington, D. C.

FORT DEFIANCE, NEW MEXICO,
February 10, 1856.

SIR: Permit me, as briefly as possible, (for I am aware that your time is valuable,) to call your attention to my claim to have an allowance of $1,294 66 in the settlement of my ordnance accounts at the treasury. To save you the trouble of looking farther than necessary, I enclose a copy of a bill which passed the Senate some sessions since, but failed to pass the House for want of time. I am informed that a similar bill passed the Senate at a later session, and failed again in the House as before.

The testimony in the case, which I suppose remains on the files of the Senate and House, is full; and the letter of the then Second Comptroller, (Mr. Parris,) upon which I greatly rely, will be perfectly satisfactory to you. But should the case go to the Court of Claims, and should that body require oral testimony, or any testimony other than is in the documents on the congressional files, and that of myself, I fear it could not be obtained. Nearly every one whose name is in the testimony I know to be dead, having assisted to bury many of them on the Missouri river, in the cholera period of 1849.

Excuse me for urging this matter upon your attention, since I am in danger of having my pay stopped to make good a loss for which I am in no way at fault, and from which the Comptroller does not relieve me "solely for the want of the legal power to do so."

Very respectfully, your obedient servant,

H. L. KENDRICK,
Brevet Major U. S. A.

CHAIRMAN OF HOUSE COMMITTEE OF CLAIMS,
Washington, D. C.

TREASURY DEPARTMENT, 2D COMPTROLLER'S OFFICE,
January 9, 1849.

SIR: In reply to yours of yesterday, in which you request "to be informed whether, in declining to allow in your account current the item of $1,294 66, (ordnance funds stolen at Jalapa,) I did so because I thought the proofs of the loss and the care to prevent that loss insufficient," I have to state that such was not the ground of my action. From the proof exhibited, as well as from the opinion of Col. Talcott, the head of the Ordnance Bureau, I was satisfied that the money was actually stolen as alleged, and that the loss was not attributable to any negligence or want of proper care on your part. I declined to credit you with the amount stolen, solely upon the ground of want of power legally so to do, as all cases of similar character have invariably been submitted to Congress, and admitted only under special acts of that body.

Very respectfully, your obedient servant,
ALBION K. PARRIS,
Comptroller.

Major H. L. KENDRICK,
2d U. S. Artillery.

ADJUTANT GENERAL'S OFFICE,
February 21, 1849.

I certify that the foregoing is a true copy from the original.
E. D. TOWNSEND,
Assistant Adjutant General.

ORDNANCE OFFICE,
Washington, August 31, 1848.

* * * * * * * *

As regards the report of the board of survey relating to loss of part of these proceeds of sale, had the loss been that of the stores before they were converted into money, I should at once recommend that Captain Kendrick be relieved from the charges, such a case being provided for by the 94th article of the ordnance regulations; and as there appears to be no difference in the equity of the case, I recommend that he be credited for the money so lost.

I am, sir, &c.,
G. TALCOTT,
Colonel of Ordnance.

J. M. MCCALLA, Esq., *Second Auditor.*

ORDNANCE OFFICE,
January 11, 1849.

I certify that the foregoing is a true extract from the orignal letter, and is the whole of it which refers to that portion of the proceeds of the sale which was lost by unavoidable accident.

WM. MAYNADIER,
Captain of Ordnance, Assistant to Colonel of Ordnance.

ADJUTANT GENERAL'S OFFICE,
February 21, 1849.

I certify that the above is a true copy.

E. D. TOWNSEND,
Assistant Adjutant General.

Proceedings of a Board of Survey, held at Vera Cruz, Mexico, in virtue of the following order, viz:

ORDERS No. 10.

HEADQUARTERS 2D ARTILLERY,
Vera Cruz July 13, 1848.

A board of survey, to consist of Captain Brooks, Captain Luther, and 2d Lieutenant Merchant, 2d artillery, will assemble to-morrow morning, to examine into the facts connected with the loss of a sum of money in the charge of Captain Kendrick, 2d artillery, and belonging to the ordnance department. The board will give an opinion thereon.

By order of Lieutenant Colonel Monroe:
H. C. PRATT, *Adjutant.*

VERA CRUZ, MEXICO, *July* 14, 1848.

The board met pursuant to the above order; all the members present. The board then proceeded to the examination of Captain Kendrick, Lieutenant Totten, Sergeant Teel, Corporal Jordan, and Provost Reitmeyer, and find the following to be the facts, viz:

That Captain H. L. Kendrick, 2d artillery, during the march from Puebla to Vera Cruz, Mexico, had the care of and was charged with the transportation of certain funds, being the proceeds of the sales of ordnance and ordnance stores, the property of the United States in Puebla; that during the time that the command was encamped at Jalapa, (the night of the 6th July, 1848) one of the specie boxes was pried open, and the sum of $1,294 66 taken therefrom; that at this

time Corporal M. J. Dickson, who had been doing duty in the ordnance department in Puebla, and on the march, and who, in addition to the guard and Captain Kendrick, had orders to watch the specie wagons, deserted the service of the United States, under circumstances leaving no doubt on the minds of the board that he feloniously took the money. The board further find that it was impossible for Captain Kendrick to obtain in Puebla or Jalapa iron chests for the transportation of this money, and he was obliged to make use of wooden boxes, which were made as secure as possible, being heavy and strongly nailed; that these boxes were too large to have been taken into his tent, and admit the use of the tent for any other purpose; that in the wagons, guarded as they were, the specie was as safe as it could be in an enemy's country; that the two specie wagons were placed only at some ten or twelve yards from, and in full view of the tent; that a special guard was at all times kept over these wagons, and that Corporal Dickson, for greater security, was ordered to sleep in one of them; that Captain Kendrick frequently visited these wagons, giving and repeating orders calculated to make the guard vigilant, himself manifesting great watchfulness over them; that he seldom left camp, and then only on duty, never leaving it at night, and never without directing the attention of Lieutenant Totten, (the only subaltern with the company,) the guard, and the sergeant of the company, to the matters in their charge; that he made use of every effort to cause the apprehension of the thief; and that Corporal Dixon, before this act, was deemed an honest and faithful man by the officers and non-commissioned officers of the company, and was properly made use of as an additional security by Captain Kendrick.

In consequence of the regiment having been ordered to embark for Fort Columbus, N. Y., the board adjourned to meet at that place.

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FORT COLUMBUS, NEW YORK,
August 23, 1848.

The board met pursuant to adjournment; all the members present. The proceedings of the board were then read over, and, after maturely deliberating all the circumstances of the case, the board is unanimously of the opinion that no blame can be attached to Captain Kendrick in the premises, he having manifested great care and anxiety over the funds in his charge, and taken every precaution to avoid loss therein.

HORACE BROOKS,
Capt. 2d Artillery.

R. A. LUTHER,
Capt. 2d Artillery.

A. MERCHANT,
2d Lieut. 2d Artillery, Recorder.

Approved:

J. MONROE,
Brevet Col. 2d art'y, commanding regiment

ADJUTANT'S OFFICE, 2D ARTILLERY,
Governor's Island, August 24, 1848.

I certify that the foregoing is a true copy of the original proceedings of the board of survey instituted by regimental order No. 10, dated Vera Cruz, July 13th, 1848.

H. C. PRATT,
Adjutant 2d Artillery.

I certify that the foregoing is a true copy.

E. D. TOWNSEND,
Assist. Adj't General.

STATE OF NEW YORK,
City and county of New York. } *ss.*

Personally appeared Captain H. L. Kendrick, United States army, before me, E. Delafield Smith, a commissioner of deeds, and deposed as follows:

I was ordered by Major General Worth, commanding department of Puebla, &c., on or about the 15th or 16th of June, 1848, to sell certain ordnance, the property of the United States, in Puebla, Mexico; which sales I made, and was charged with the transportation of the money received (specie—silver) to Vera Cruz. Being unable to procure iron chests, the money was placed in wooden boxes, strongly made and well nailed, and these placed in two wagons.

On making my examination of these wagons on the 7th July—we were then encamped at Jalapa—I found that one of the specie boxes had had its cover pried off, and an amount of money, which I have ascertained to be $1,294 66, taken therefrom. As Corporal W. J. Dickson, who had been doing duty in the ordnance depot in Puebla, and who, for greater security, had been ordered to sleep in one of the specie wagons, deserted the service of the United States on the night of the robbery, I have no doubt of his having abstracted the money in question. I made use of every effort to cause the apprehension of the said Dickson, sending a description of him to the different guards in the city, and to the governor, and causing advertisements in English and Mexican, describing the deserter, and offering rewards for his apprehension, to be posted up in Jalapa and Vera Cruz, and sending them to Puebla and Mexico; but without success.

A special guard was placed over these specie wagons, which was frequently visited by me day and night, to secure its vigilance, strict orders to the same end being often given. Corporal Dickson, who under my supervision had orders, in addition to the guard, to watch these wagons, had always borne the character of a trustworthy man in the opinion of the officers and non-commissioned officers of the company.

H. L. KENDRICK,
Captain 2d Artillery.

Sworn to and subscribed before me, this twenty-third day of August 1848.

E. DELAFIELD SMITH,
Commissioner of Deeds for the city and county of New York.

ADJUTANT GENERAL'S OFFICE, *February* 21, 1849.

I certify that the above is a true copy from the original.

E. D. TOWNSEND,
Assistant Adjutant General.

STATE OF NEW YORK, }
City and county of New York, } *ss.*

Personally appeared Lieut. J. S. Totten, 2d artillery, before me, and made oath as follows:

I accompanied Captain Kendrick's command from Puebla to Vera Cruz, Mexico, between the 18th of June and 14th July, 1848, and was the only officer present with the company besides Captain Kendrick. During this time Capt. Kendrick was in charge of two specie wagons.

During the time the command remained in camp at Jalapa, these wagons were placed at some ten or twelve yards from the tent occupied by Captain Kendrick and myself, and in view of the same. A special guard was placed over these wagons, and orders given repeatedly to the sentinels and non-commissioned officers to be particularly watchful of these wagons. Captain Kendrick was never absent from camp at night, and seldom during the day, and never without mentioning it to me, that I might have a care of matters during his absence.

On or about the 7th of July, (while at Jalapa,) the captain came into the tent and stated that one of the specie boxes had been broken open; and as Corporal Dickson had disappeared, it was supposed to have been broken open by him. He has not since been with the company. To the best of my knowledge and belief, (I assisted in counting the money,) $1,294 66 were taken from the box. All the boxes were very securely nailed. I had no reason until this event to believe Corporal Dickson, who had been acting ordnance sergeant, and who, under supervision of Captain Kendrick, had been placed (in connexion with the guard) in the especial charge of these specie wagons, to be otherwise than an honest and trustworthy man. I have known him since August 9, 1847.

I heard a man in the employment of the quartermaster's department say to Captain Kendrick that he was unable to find any iron safes in Jalapa for sale.

I know of no additional and reasonable precautions that Captain Kendrick could have taken to avoid this robbery. He appeared anxious and at all times cautious of his charge.

JOSEPH SWIFT TOTTEN,
1st Lieut. 2d Artillery.

Subscribed and sworn to before me, this 15th day of August, 1848.

E. DELAFIELD SMITH,
Commissioner of Deeds.

ADJUTANT GENERAL'S OFFICE,
February 21, 1849.

I certify that the above is a true copy from the original.

E. D. TOWNSEND,
Assistant Adjutant General

STATE OF NEW YORK, }
City and county of New York, } *ss:*

Personally appeared Sergeant M. C. Teel before me, H. Denison Townsend, and certified as follows:

I am 1st sergeant of company B, 2d artillery. I accompanied the command in charge of wagons containing ordnance stores, and also two specie wagons, the whole in charge of Captain Kendrick, from Puebla to Vera Cruz. A special guard was kept over these two wagons, and they were always placed near Captain Kendrick's tent. I was present with him when he made his inspection of them on the 7th July at Jalapa. I saw that one of the specie boxes had had its cover pried off. There was a bag of specie at each end of this box, and an empty space between them large enough to contain another bag of the same size, or a little larger; these bags were partially open. This box was a substantial one, and strongly nailed.

Suspicion fell on Corporal Dickson, who, as an additional safeguard, had been directed to sleep in the wagon in which the broken box was found; and, on inquiry, he could not be found, nor has he since been heard of to my knowledge.

His description was at once sent to the American governor of Jalapa, and to the various guards in the city, and patrols sent out.

I am well acquainted with Corporal Dickson; have known him for about two years; have been intimate with him; and never, until this robbery, had the least doubt of his perfect integrity. I deemed him a very proper person to be placed in the specie wagons, and this was his general character in the company.

During our stay at Jalapa, Captain Kendrick was very seldom absent from camp; and never, to my knowledge, at night. Whenever he left, he called the attention of Lieutenant Totten (the only subaltern with the command) and my own to the matters in his charge. He always seemed anxious about this specie. He often visited the wagons and the guards by day and night. I do not know what additional safeguards he could have adopted. The specie, being in large boxes, (not filled on account of the too great weight,) could not have been put in his tent, and the tent be inhabited.

M. C. TEEL,
1st Sergeant Company B, 2d Artillery.

Sworn to and subscribed before me, this 23d day of August, A. D. 1848.

H. DENISON TOWNSEND,
Commissioner of Deeds for the city.

ADJUTANT GENERAL'S OFFICE, *February* 21, 1849.

I certify that the above is a true copy from the original.

E. D. TOWNSEND,
Assistant Adjutant General.

STATE OF NEW YORK, }
City and county of New York, } *ss:*

Personally appeared Corporal Stephan, company D, 2d artillery, before me, E. Delafield Smith, a commissioner of deeds, and testified as follows:

I was on guard often over the specie wagons as a non-commissioned officer during the march from Puebla to Vera Cruz. Captain Kendrick visited the guard and wagons frequently during the day and night, giving and repeating orders to guard the wagons carefully; the wagons were near the captain's tent. If anything suspicious occurred, the captain was to be called up. If the sentinel saw any leave the wagons at night, he was to call for the corporal of the guard and have him examined. Captain Kendrick guarded the wagons as much as he possibly could. I was a tent-mate (during the daytime) of Corporal Dickson at Jalapa, and have known him for nearly two years, and always thought him a very honest man. I have not seen him since the night of the robbery.

JOHN STEPHAN.

Sworn and subscribed to before me, this 22d day of August, 1848.

E. DELAFIELD SMITH,
Commissioner of Deeds.

ADJUTANT GENERAL'S OFFICE, *February* 21, 1849.

I certify that the above is a true copy from the original.

E. D. TOWNSEND,
Assistant Adjutant General.

STATE OF NEW YORK, }
City and county of New York, } *ss.*

Personally appeared Sergeant George Orwell, company B, 2d artillery, before me, E. Delafield Smith, a commissioner of deeds, and deposed as follows:

I was often the non-commissioned officer of the guard placed over the specie wagons in charge of Captain Kendrick during the march from Puebla to Vera Cruz, and while we were encamped at Jalapa. The orders given by Captain Kendrick, and often repeated, were calculated to secure the vigilance of the sentinels, and he frequently visited the guard and wagons by day and night. No soldiers or citizens were allowed about the wagons and no one was to enter them after eight o'clock at night, or to leave them, unless to go to the sink, and then not to go beyond the bounds of the sentinels. If anything suspicious occurred, it was at once to be arrested, and Capt. Kendrick to be informed of it; and this by day and night. He seemed very anxious about the wagons in his charge. I do not know what more he could have done.

I have known Corporal Dickson, who had orders to sleep in one of the wagons for the purpose of watching it, for nearly two years. I

am well acquainted with him; for a part of the time he lived in the same room with me. I always believed him an honest and trustworthy man, and he was so esteemed in the company until his disappearance at Jalapa. I do not know of any additional means that could have been taken to avoid loss. Captain Kendrick did all that could be done.

GEORGE ORWELL,
Sergeant Company B, 2d Artillery.

Signed and sworn to before me, this 22d day of August, 1848.
E. DELAFIELD SMITH,
Commissioner of Deeds.

ADJUTANT GENERAL'S OFFICE,
February 21, 1849.

I certify that the above is a true copy from the original.
E. D. TOWNSEND,
Assistant Adjutant General.

STATE OF NEW YORK,
City and county of New York, } *ss.*

Personally appeared Sergeant Morton, company B, 2d artillery, before me, E. Delafield Smith, a commissioner of deeds, and made oath as follows:

I have been non-commissioned officer of the guard over the specie wagons in charge of Captain Kendrick from Puebla to Vera Cruz. He was in the habit of visiting the guard and wagons at various times, day and night, and seemed very anxious and careful about them. I have known Corporal Dickson since June, 1846, and always believed him a trustworthy man. I have not seen him since the night of the robbery.

JAMES MORTON.

Sworn to and subscribed before me, this 22d day of August, 1848.
E. DELAFIELD SMITH,
Commissioner of Deeds.

ADJUTANT GENERAL'S OFFICE,
February 21, 1849.

I certify that the above is a true copy from the original.
E. D. TOWNSEND,
Assistant Adjutant General.

STATE OF NEW YORK,
City and county of New York, } *ss.*

Personally appeared before me, E. Delafield Smith, a commissioner of deeds, Corporal H. H. Evertson, of company B, 2d regiment of ra-
tillery, who deposes and *says* that he belonged to said company B,

2d artillery, and that he accompanied two United States wagons containing specie (ordnance funds belonging to the United States) on the march from Puebla, Mexico, to Jalapa, Mexico, and that, to the best of his knowledge, said specie was properly boxed and secured, and all precautions for its safe conveyance made use of by Captain Kendrick, the officer in charge; a strong guard being placed over it at all times, and the strictest orders given concerning the same, no person whatever being allowed to go near or interfere with said wagons except the commanding officer, teamsters in charge of the teams, and Corporal Dickson, a non-commissioned officer of B company, 2d artillery, who was acting ordnance sergeant, and in special charge of said wagons.

This deponent further states that he was, and had been, acquainted with said Dickson since his joining the company, in 1846, and that he had not the slightest doubt of his integrity, &c., until his desertion, at the city of Jalapa, Mexico, on the 6th or 7th July last, and that up to that time he believed him worthy of the trust reposed in him by his commanding officer.

And furthermore, that the teamsters connected with the wagons referred to were not allowed to leave or visit their wagons during the night without reporting to the sergeant of the guard, it being his duty to report all suspicious circumstances immediately to the commanding officer.

HENRY H. EVERTSON.

Sworn and subscribed this 15th day of August, 1848, before me.

E. DELAFIELD SMITH,
Commissioner of Deeds.

ADJUTANT GENERAL'S OFFICE,
February 21, 1849.

I certify that the above is a true copy from the original.

E. D. TOWNSEND,
Assistant Adjutant General.

STATE OF NEW YORK,
City and county of New York, } *ss.*

Personally appeared Corporal John J. Jordan, company B, 2d artillery, before me, E. Delafield Smith, a commissioner of deeds, and made oath as follows:

I was the non-commissioned officer of the guard placed over the specie wagons in charge of Captain Kendrick, at the time of the robbery of one of them in Jalapa. Privates Hale, Reitmeyer, and Mingus were members of the guard. Of the circumstances of the robbery I have no personal knowledge. Corporal Dickson, as an additional security, was ordered to sleep in one of the wagons, as he had been before. I have not seen him since that time. During the daytime the was a tent-mate of mine. I had no doubt of his being an honest man till *the time* of his disappearance. Captain Kendrick frequently visited

the guard, and called me up at night, and manifested much anxiety and care in reference to the money. His orders were very strict; to be vigilant, and if anything suspicious occurred he was to be called up. I do not see how he could have been more careful than he was to avoid loss. I have known Corporal Dickson since June, 1846.

JOHN J. JORDAN,
Corporal company B, 2d artillery.

Sworn to and subscribed before me, this twenty-third day of August, 1848.

E. DELAFIELD SMITH,
Com. of deeds for the city and county of N. Y.

ADJUTANT GENERAL'S OFFICE,
February 21, 1849.

I certify that the above is a true copy from the original.

E. D. TOWNSEND,
Assistant Adjutant General.

Personally appeared Private Hale, company B, 2d artillery, before me, E. Delafield Smith, a commissioner of deeds, and made oath as follows:

I was a member of the guard specially in charge of the specie wagons in Jalapa, at the time one of them was robbed. Of the circumstances of the robbery I know nothing. I saw Corporal Dickson go into the wagon about fifteen minutes before I was relieved, and did not again leave while I was on post. I have known Corporal Dickson for two years, and never doubted his honesty until this affair. I have never seen him since that night.

BARNARD his × mark HALE.

Sworn and subscribed to before me, this twenty-third day of August, 1848.

E. DELAFIELD SMITH,
Com. of deeds for the city and county of N. Y.

ADJUTANT GENERAL'S OFFICE,
February 21, 1849.

I certify that the above is a true copy from the original.

E. D. TOWNSEND,
Assistant Adjutant General.

Personally appeared before me, E. Delafield Smith, a commissioner of deeds, Private George Mingus, and made oath as follows:

I was a member of the guard at the time the specie wagon was robbed at Jalapa. I have no personal knowledge of the circumstances of the robbery. I have not seen Corporal Dickson since that night. He did not leave the wagon while I was on post.

his
GEORGE + MINGUS.
mark

Sworn and subscribed to before me, this twenty-third day of August, 1848.

E. DELAFIELD SMITH,
Com. of deeds for the city and county of N. Y.

—

ADJUTANT GENERAL'S OFFICE,
February 21, 1849.

I certify that the above is a true copy from the original.

E. D. TOWNSEND,
Assistant Adjutant General.

Personally appeared Private Reitmeyer, company B, 2d artillery, before me, E. Delafield Smith, a commissioner of deeds, and made oath as follows:

I was a member of the guard over the specie wagons, in Jalapa, at the time one of them was robbed. I saw Corporal Dickson leave the wagon at half-past eleven o'clock, about half an hour before I was relieved. He said he had the diarrhœa. He did not go back while I was on post. He had a blanket on, folded in front, in the way soldiers wear their blankets, his hands being held in front. I have not seen him since. I saw Captain Kendrick visit the guard and the wagons that night several times, as he had also at other times.

AUGUST. REITMEYER.

Sworn to and subscribed before me, this twenty-third day of August, 1848.

E. DELAFIELD SMITH,
Com. of deeds for the city and county of N. Y.

—

ADJUTANT GENERAL'S OFFICE,
February 21, 1849.

I certify that the above is a true copy from the original.

E. D. TOWNSEND,
Assistant Adjutant General.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 74.

WILLIAM F. WAGNER.

[To accompany bill H. R. No. 712.]

JANUARY 16, 1857.

Mr. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom were referred the memorial of William F. Wagner and the accompanying papers, have had the same under consideration, and now report:

The petitioner, William F. Wagner, was marshal of the United States for the eastern district of Louisiana in 1847. Whilst holding that office, a suit was instituted in the district court of that district by the United States against a quantity of timber alleged to have been illegally cut by trespassers on the lands of the United States, and an order for the sequestration of the timber was issued by the district court, commanding him to take the timber in question into his keeping.

In obedience to this order of the court, the petitioner went into the district of country in which the timber was situated and seized it. This seizure was made at a distance of one or two hundred miles from the city of New Orleans; and it became his duty, under the law in force, to provide for its safe keeping, and to protect it from being carried off by those who had cut it. He therefore put a keeper in charge of the property, who continued in charge of it from the 16th of June, 1847, to the 29th of January, 1848, amounting to two hundred and twenty-eight days, for which he paid him at the rate of $2 50 a day. This payment is shown by the receipt of the keeper; and the sum so paid, together with the fees due the marshal, amounted to the sum of six hundred and sixty-six dollars. The account presented was certified by the district judge to have been examined and approved.

In the latter part of the year 1847, a suit was brought by the United States against the schooner Renaissance and cargo. The schooner was seized by the marshal under the authority of the court, and was condemned and sold. The costs and various expenses incurred in the course of the proceedings, for the sale, &c., amounted to $533 35, which was paid out of the proceeds of the property sold; but, upon an appeal to the circuit court, the decree of the district court was reversed condemning the vessel and cargo, and the marshal was compelled to pay the amount he had received over to the claimants.

These claims were presented to the Navy Department, but were not paid, as there were no funds under the control of that department to pay. They were then referred to the Interior Department. There was some inclination there to regard them as payable out of the judici-

ary fund, and they were sent to the Comptroller's office. The Comptroller did not think that they could be paid out of the judiciary fund, but would require for their payment the intervention of Congress. In the report from his office, which is among the papers before the committee, the Comptroller expresses doubts as to the propriety of allowing the amount paid to the keeper who had charge of the timber seized by the United States, as cut upon the public land, without proof of the necessity for that service and of its reasonableness. He also expressed doubts whether the marshal ought not to be required to have recourse upon the captors who libelled the Renaissance and her cargo.

Your committee are of opinion that the claims ought to be paid. The correctness and reasonableness of the charges in the timber case are certified to by the district judge. In the case of the Renaissance and cargo, the correctness of the account is certified by the district judge, and the disbursement of the amount is established by the oath of the marshal. When a public officer employs his own money in defraying expenses incurred in proceedings had at the instance of the United States, he certainly ought to be repaid, without being burdened with the task of seeking payment from third parties, (as in the case of the Renaissance,) who might possibly have been compelled to make the payment if the court had not neglected to perform its duty, as suggested by the Comptroller.

Your committee, therefore, report a bill for the relief of Mr. Wagner, and recommend its passage.

THE UNITED STATES, *vs.* A LOT OF TIMBER. } *United States District Court.—No.* 6388.

Received January 29, 1848, from W. F. Wagner, United States marshal, five hundred and seventy dollars for keeping in the above case, from June 16, 1847, to date inclusive—say two hundred and twenty-eight days, at $2 50 per day.

$570 00. JOHN EVANS.

THE UNITED STATES, *vs.* A LOT OF TIMBER. } *In the United States District Court for the District of Louisiana.—No.* 6388.

"This was a civil suit, instituted by the district attorney, claiming as the property of the United States a lot of timber, cut upon the public lands of the United States in Louisiana."

1847.		
June 5.—	Writ of sequestration	$2 00
	Petition $2; Monition $10	12 00
	Mileage to make seizure and take possession, four hundred miles	40 00
	Mileage of keeper, four hundred miles	40 00
June 17.—	Notice of trial	2 00
		96 00

1848.

January 29.—Paid keeper of said timber from the day of sequestration, June 16, 1847, to January 29, 1848, inclusive, two hundred and twenty-eight days, at $2 50 per day..... $570 00

Amount of marshal's fees..... 666 00

Stated by

W. F. WAGNER,
United States Marshal.

Examined and approved:

THEO. H. McCALEB,
United States Judge.

On the 29th February, 1848, the district attorney, by instructions from the Secretary of the Navy and from the Solicitor of the Treasury, discontinued the proceedings in this matter, and the property was unconditionally restored to the claimants.

W. F. WAGNER,
Late United States Marshal.

—

District of Louisiana:

I, W. F. Wagner, marshal of the United States for the district of Louisiana, being duly sworn, do depose and say: That all the services charged in the following bill of costs, have been actually and necessarily performed, as therein charged, and that the disbursements therein charged have been by me actually paid, and the sums charged as fees are such as are allowed by the statutes of the United States, or by the statutes of the State of Louisiana, as I sincerely believe to be true.

W. F. WAGNER,
Late United States Marshal.

Subscribed and sworn before me this —— day of May, 1850.

THEO. H. McCALEB,
United States Judge.

I, Theodore H. McCaleb, judge of the United States district court for the eastern district of Louisiana, do hereby certify that I have carefully examined the items charged in the following bill of costs, and that they are such as are authorized by the statutes of the United States, or by the statutes of the State of Louisiana, and are strictly conformable to law, and that such services were necessary and proper in the said cause.

THEO. H. McCALEB,
United States Judge.

THE UNITED STATES *vs.* SCHOONER RENAISSANCE AND CARGO. } *In the United States District Court, District of Louisiana.—No.* 6427. *Prize of war.*

1847.		
December 6.—Admiralty warrant $2, and libel 50 cents		$2 50
Monition		10 00
Mileage to execute warrant		1 00
December 7.—Serving libel		2 00
December 8.—Writ of arrest for witness		2 00
Conveying prisoner before United States commissioner		1 00
Discharging prisoner on bail		50
Mileage to arrest witness, two expenses of guard		2 00
December 9.—Towage across the river		5 00
Paid expenses of removing vessel		8 00
December 24.—Towage from Point to McDonoughville		15 00
Paid for unbending sails, &c		7 00
Proclamation of vessel and cargo		60
Inventory of vessel and cargo		10 00
Paid for discharging cargo		10 00
December 30.—Paid for pilotage of vessel over the bar		24 50
Paid for towage from sea		100 00
1848.		
February 2.—Three notices to appraisers of vessels and cargo.		3 00
Paid appraisers' and umpire's fees, $5 each		15 00
February 12.—Rule		50
February 14.—*Venditioni exponas* of vessel		2 00
February 21.—Notice of trial		2 00
February 28.—Paid for bringing cargo across the river		20 00
Paid for labor and drayage, &c., on cargo		10 00
Advertising sale of vessel—		
Paid "Bee," French and English	$12	
Paid "Delta" in English	6	
		18 00
Commissions on sale $600		13 75
March 6.—Paid for keeping and guarding vessel and cargo to the 6th March, 1848—ninety-one days, at $2 50 per day		227 50
April 28.—Rule		50
May 25.—Order of court to release cargo from seizure		50
Paid proctor's fee		17 00
May 12.—Order of court		50
June 16.—Citation of appeal to circuit court		2 00
		533 35

This amount was deducted from the proceeds of property seized in the above case, and sold by virtue of a writ of *venditioni exponas* from the United States district court; but subsequently an appeal was

taken to the United States circuit court, the decision of the district court reversed, and the marshal ordered to pay said proceeds over to claimants; which he did, as the whole will appear from copies of orders annexed, and the receipt of the proctors for claimants.

W. F. WAGNER,
Late United States Marshal.

In an adjustment of the account of expenses of courts of William F. Wagner, late marshal for the district of Louisiana, (No. 103, 451,) the following were refused to his credit, and the reasons given in the statement of differences as follows, viz:

"Costs taxed paid Thomas J. Durant, attorney, four cases, $17 each, all prize cases, not payable out of judiciary fund, (apply to Secretary of the Navy,) $68.

"Marshal's costs in suit United States *vs.* schooner Renaissance, prize of war, (apply to Secretary of Navy,") $533 35. A

Paid Thomas J. Durant six fees of $17 each in prize cases, not payable out of judiciary fund, (apply to Navy Department,) $102.

Marshal's costs—United States *vs.* Joseph Bell et al. Explanation required as to character, &c., of suit, $6 70. A

Abstract of costs district court, February term, 1847; bill No. 38—Suit against a "lot of timber." The charge of $570 for keeping the timber is so large, that some explanation should be afforded respecting it as to the necessity of incurring the expense, and the reasonableness of the charge. It should also be approved by the Secretary of the Navy. The whole amount of the bill is now withheld from his credit—$666. A

The vouchers for these sums appear to have all been returned to the marshal, with the Comptroller's letter advising him of the adjustment.

On the 1st of June, 1852, the Secretary of the Navy wrote to the Comptroller as follows, viz:

"In the account of Wm. F. Wagner, esq., late United States marshal for the district of Louisiana, presented for allowance, are the following vouchers, which appear to me to be chargeable to the 'judiciary' fund, and are therefore referred to you for such action as may be deemed proper.

"Attorney's fees United States *vs.* schooner Yucateco and cargo, (prize,) $17.

"Attorney's fees United States *vs.* schooner Monteguna, $17.

"In these cases the captured property was condemned and sold, and the costs were chargeable upon the proceeds, as in all prize cases where there have been condemnation and sale. There must have been other costs besides the district attorney's fees paid by the marshal. He does not explain why this alone is left unsettled.

"Bill of costs United States *vs.* schooner Renaissance and cargo, (prize,) $533 35. B

"In this case it appears that there was no final condemnation, the property *having been restored* upon an appeal to the circuit court.

The costs, therefore, could not be paid out of the proceeds, and there is no fund out of which the department can pay them.

"Bill of costs United States *vs.* Joseph Bell et al., timber deposited, $6 70. B

"Bill of costs United States *vs.* J. Baldwin and J. A. Rogers, contract, lot of timber, timber deposited, $666. B

"Marshal's commissions, $1 96.

"In relation to these timber cases, &c., it is presumed that all necessary information can be obtained at the office of the Solicitor of the Treasury.

"So far as this department has any control over the account of Mr. Wagner, it will be settled; and it requests that the portion of it now referred to your office, and amounting to $1,247 61, may receive early attention. The balance of $114 will be paid by the Fourth Auditor.

"Very respectfully, your obedient servant,

"WILL. A. GRAHAM.

"Hon. ELISHA WHITTLESEY,
First Comptroller."

With this letter were transmitted the vouchers for the amounts referred to in it. The items in the above letter which I have marked B, it will be perceived, are the identical same which were suspended as aforesaid, and which I have marked A in the preceding extract from the differences, made upon the aforesaid adjustment. The two items of $17 each, in the letter, it is probable, form portion of the item of $68, or of $102, in the extract of differences. The item of $5, charged in case of J. Baldwin and J. A. Rogers, named in the letter, does not appear to have heretofore been before the accounting officers. As the aforesaid adjustment, No. 103,451, was revised in the Comptroller's office, January 4, 1851, and there are pencil notes on some of the vouchers transmitted with the Secretary's letter, which were made in this office before the receipt of his letter, it is evident that the claims were submitted to him subsequently to the action of the accounting officers upon them.

The Secretary expresses the opinion that the vouchers named in his letter are chargeable to the judiciary fund. I do not concur with him entirely.

First, in respect to the seizures of war. Where they are condemned as prizes of war, the rule seems to be that all necessary expenses incurred in bringing them into the jurisdiction of the proper court, and all costs and charges incident to adjudication which are on the part of the libellants, are payable out of the proceeds of such prizes; but that such portions of them as grow out of the interposition of the claimants, they would be held responsible to refund to the libellants.

Where they are not condemned, but restored to the claimants, and justifiable cause of seizure should exist, then it would be in the power of the court to mulct them in the full amount of the costs and expenses, as a punishment for the neglect of those precautions pointed out in the laws of this country, which would have afforded them immunity from molestation or harm from the hands of this government; or if the court should not deem it consistent with justice to impose

the whole or any part of the libellant's costs and expenses upon the claimants, then, upon its certificate of probable cause, the United States would be responsible for so much as should not be taxed against the claimants. In case the property should be restored, and probable cause refused to be certified by the court, then the captors would have to be looked to for the expenses incurred in bringing in, and the costs growing out of the libel. And the claimants would have, in the first place, to pay the costs of the defence, and seek restitution from the captors; they would also have an action in damages for trespass against the captors.

In the event, however, of any charges growing out of seizures of war, and adjudication upon them being raised against the United States, I do not think that the judiciary fund would be applicable to their payment; but that the proper fund to resort to would be that appropriated to defray the expenses of the war. Or, if from any cause such fund should not be existent, then the legislation of Congress would have to supply the needful.

The judiciary appropriation is based upon estimates for such expenses of judicial proceedings as arise in the ordinary and peaceful condition of things, and is designed only to defray these. Those which the extraordinary exigencies of war bring about must be otherwise provided for.

In respect to the cases before me, that of the schooner Renaissance and cargo, alone, appears not to have been condemned. It therefore is only to be considered. The costs in the others cannot be charged against the United States. Then, as to the Renaissance case, no certificate of probable cause has been presented; there is nothing to show that the court exempted the claimants and the captors, or either of them, from costs; and I presume that the balance of the appropriation which was made by the act of 13th May, 1846, for the purpose of "prosecuting the war to a speedy and successful termination," if there was any, has long since passed to the "surplus fund." Under these circumstances, it seems to me that the bill claimed cannot be allowed without the intervention of Congress—at least, that the accounting officers have no authority to allow it.

The next item of importance which I shall consider is the $666, the amount of the marshal's bill in the suit against a "lot of timber." It contains a charge for "monition, $10," which I think not warranted by any law. A charge for amount "paid keeping of said timber from the day of sequestration, 16th June, 1847, to 29th January, 1848, inclusive, 228 days at $2 50 per day..... $570 00
and for mileage of keeper, 400 miles..... 40 00

The charge of $570 is receipted for by "John Travis." There is no evidence that he was paid the mileage. The suit appears to have been dismissed on the 29th February, 1848, one month after the last day included in the charge for keeping. There is nothing shown respecting the timber during this month, whether it was continued and secured in the custody of the law, or was rescued or abandoned to chances, or in any other circumstances, does not appear. And as respects the keeping, no explanation is made as to the necessity of such an expense *being incurred*. Charges of this description should be

accompanied with a presentation of all the circumstances that were supposed to involve the necessity of the expense; and to justify the allowance, it should be made evident that it was the consequence of a precaution which fidelity to the purposes of justice required. It seems to me that the expense might have been avoided.

The suit, it appears, was brought at the instance of John Claiborne, agent of the Navy Department for the preservation of live-oak timber. [See district attorney's letter of June 5th, 1847, on file in Solicitor's office.] Suit was tried and verdict rendered for defendant.—[See district attorney's letter of January 30th, 1848, on file in Solicitor's office, copy of which is herewith presented.] Further proceedings discontinued by instructions from Secretary of Navy. [See district attorney's report of June 30th, 1848.]

A letter of Claiborne to the Secretary of the Navy, a letter of the Secretary to him, copies of which, marked respectively A and B, are hereto attached; and the letter of the district attorney of 30th January, 1848, above referred to, will give a knowledge of the case.

Respectfully submitted,

J. M. RAMSEY,
September 29, 1853.

Hon. E. WHITTLESEY,
Comptroller.

A.

NEW ORLEANS, *January* 19, 1848.

SIR: The trial of John P. Hickey, for trespass on the public lands in the parish of St. Mary, Louisiana, has resulted in his being acquitted. The verdict of the jury was a matter of great and unconcealed surprise to the court, as well as to the district attorney, as the evidence was considered conclusive against the accused. It seems that the jury were unwilling to convict him upon the grounds that there was no proof that he had actually been seen with an axe cutting timber, nor heard to order others to do so; and that it was, moreover, testified by Messrs. Deal & Vaughn that the timber was intended to be used in the construction of a seventy-four for the navy, and that they were sub-contractors for the supply of timber for the vessel. There was testimony that Hickey had remained on the land only long enough for the timber to be cut by the hands employed by Deal & Vaughn, and that he had told some of the witnesses that so soon as he was paid for the live oak he would leave the place, and actually did so, coming to this city to seek work as a tailor. It was also shown to the jury that under the 5th section of the act of September 4, 1841, under which Hickey claimed the land as pre-emptor, no pre-emption rights were to be allowed after the breaking out of hostilities between this and any other country; and that the United States, being engaged in a war with Mexico since May, 1846, no register could grant a pre-emption certificate after that date, nor could any settler acquire any pre-emption right to any part of the public domain under

the terms of the law. In the face of this array of testimony and law, an intelligent jury, composed of residents of New Orleans, acquitted the accused, after a consultation of not more than *two minutes*. This verdict is a matter of astonishment to me, as I had taken every care to procure full and sufficient evidence to insure conviction in the cases of Doss and Hickey, and my confidence of success was shared by the district attorney. Mr. Durant thinks that every attempt to reclaim the timber from Deal & Vaughn, the parties in possession when the seizure was made, would result only in incurring additional costs to the department. I will therefore take an obligation from those parties for the delivery of all the timber to the Bureau of Construction and Repair, should the head of that bureau elect to take it, the delivery to take place upon such terms and at such point as the parties and the bureau may agree upon. In a conversation with Messrs. Deal & Vaughn, some days since, they expressed their willingness to deliver the timber to the department on such conditions as they had already made known to Commodore Skinner. Every day's exposure must injure the timber, which, on my examination, appeared for the most part sound and well fitted for naval uses; and I therefore make the arrangement with Deal & Vaughn the more readily, as I am convinced that the interests of the department will be served by its being carried out without further delay. The case against Joseph E. Bell is set down for trial on the 15th February, and I trust that it will have a different termination from that of Hickey. Doss has fled to Texas, and I have not been able to obtain any information as to his whereabouts in that State.

The result of the trial of Hickey induces me respectfully to advise that the Secretary of the Navy should ask of Congress the passage of a law by which settlers on public lands, upon which live oak, red cedar, or white cypress may grow, should be prohibited, for a limited time after their settlement might begin—say two years—from cutting any more of said timber than should be actually necessary for building or cultivation; and that should any settler sell any such timber within the period limited, the proceeds thereof should become wholly the property of the United States. Such a law would tend more than any other measure that has yet been adopted to prevent the sale or destruction of these valuable timbers.

I am, sir, respectfully, your obedient servant,

JOHN CLAIBORNE,
Live Oak Agent.

JOSEPH SMITH, Esq., *U. S. N.*,
Chief of Bureau of Yards and Docks, Washington City.

B.

NAVY DEPARTMENT, *February* 8, 1848.

SIR: Your report to the Bureau of Yards and Docks, under date of the 19th January ultimo, has been received and transmitted to this department. *Such is the* importance of the point ruled by the court

in the case against Hickey, and the consequences which must result if the act of 1841 shall be considered as suspended by the war with Mexico, that I have felt it to be my duty to lay the subject before the President. With habitual respect for the opinions of the courts, I cannot concur in the construction given by the court in this place. The fifth section of the act clearly was intended to apply to those sections which provide for the distribution of the proceeds of the sales of the public lands, and to suspend this system in time of war with a foreign nation. The object certainly was, that the revenues from this source should all remain in the treasury for common defence during the period of war. Superadded to the sections authorizing distribution, are those which establish the systems of pre-emptions, by which settlers who are unable at the time of entering on the public lands to make payment, but who declaring their purpose to buy, and making special improvements, are permitted to occupy a fractional subdivision for twelve months, and then purchase in preference to any others. This system was intended and is believed to facilitate the sales of the public lands, and of course increase the revenue arising. It could not have been the intention of Congress to have suspended this system, producing such results during the existence of war, when revenue was required for the public purpose of carrying on the war; no such construction has been placed on the act by the Executive, by whom sales of the public lands have been encouraged in every form, whether by public sale, private entry, or pre-emption; and the acts passed by Congress since the declaration of the present war, exempting lands in the occupation of settlers from location in satisfaction of soldiers' bounty lands, show that it was not supposed by Congress that the pre-emption system is suspended. As doubts have been created on the subject by the decision of the court in Hickey's case, Congress will act on the question; and in the mean time the President directs me to instruct you not to institute or prosecute proceedings against actual settlers claiming pre-emptions on declarations made since the commencement of the war with Mexico.

In the case of Hickey, and perhaps in others, you appear to have treated as trespassers on the public lands persons who have taken possession with declaration of intention to improve and purchase as pre-emptioners, on the ground that the steps were not taken in good faith, but with the purpose of cutting and removing timber from the public lands in fraud of the law. The act of 1841 contemplates the settler as unable to pay for the land at the time of settlement, and not only acknowledges his right to exercise acts of ownership to aid him in paying the minimum price at the end of the term of twelve months, but makes improvement, by clearing a portion of the land, a duty which he must perform. In the case of lands not specially reserved for naval purposes, the question of the right of the settler to perfect his title belongs to the Treasury Department; and if the proof is satisfactory to the officers acting under that department, the purchase money received by them, and a certificate or patent issued, it is not only not the province of the Navy Department or its agents to *question* the validity of the title, but I have no doubt that the right *relates* back to the date of the declaration, and legalizes all interme-

diate acts of ownership in cutting and selling timber, or in any other manner treating the land as absolutely the property of the settler; while a fraudulent declaration, without the intent to purchase, does not confer the right so to use. It is always difficult to determine the *quo animo*, and proceedings founded on the belief that the settlement is not in good faith ought to be adopted with extreme caution. When the act of 1831 passed, all settlers on the public lands without payment were trespassers. By the act of 1841 they cease to be so, and inducements are held out to the poor man to settle, improve, and cultivate, that he may be able by his labor to pay for his home.

If you have seized timber cut from public land not reserved from sale, or instituted prosecutions for trespasses in cutting it from lands claimed by a settler, with a declared purpose of becoming a pre-emptioner, and the settler shall have been on the land at the date of the prosecution, his time of payment unexpired, or shall have received at the land office a certificate of payment before trial, entitling him to a patent, you will have the prosecution dismissed, and the timber restored; and if judgments shall have been rendered in such cases, you will suspend proceedings to enforce them, and report them to the department, with copies of the judgments.

Be pleased to acknowledge this letter on its receipt.

I am, sir, very respectfully, your obedient servant,

J. Y. MASON

JOHN CLAIBORNE, Esq.,
Live Oak Agent, &c., New Orleans.

NAVY DEPARTMENT,
December 5, 1853.

SIR: Your letter of the 11th ult., returning "certain accounts of Wm. F. Wagner, esq., late United States marshal for the district of Louisiana," with a report upon the subject, has been received.

The accounts presented being for expenses alleged to have been incurred by the marshal in suits brought directly by and in behalf of the United States, the department was of the opinion that, if properly vouched, and approved by the United States court under whose order they were incurred, and not otherwise provided for, they were chargeable to the appropriation for "defraying the expenses of suits in which the United States are concerned, and of prosecutions for offences committed against the United States, and for the safekeeping of prisoners."

There is no fund under the control of this department out of which the bills can be paid; and as they appear to have been examined and approved by the judge of the United States court for the eastern district of Louisiana, they are respectfully returned to you for your final decision, which you are requested to communicate to the claimant.

I am, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. ELISHA WHITTLESEY,
First Comptroller, Treasury Department.

NAVY DEPARTMENT,
December 5, 1853.

SIR: Your letter of the 15th ultimo, returning "certain accounts of Wm. F. Wagner, esq., late United States marshal for the district of Louisiana," with a report upon the subject, has been received.

The accounts presented being for expenses alleged to have been incurred by the marshal in suits brought directly by and in behalf of the United States, the department was of opinion that, if properly vouched and approved by the United States court, under whose orders they were incurred, and not otherwise provided for, they were chargeable to the appropriation for "defraying the expenses of suits in which the United States are concerned, and of prosecutions for offences committed against the United States, and for the safekeeping of prisoners."

There is no fund under the control of this department out of which the bills can be paid; and as they appear to have been examined and approved by the judge of the United States court for the eastern district of Louisiana, they are respectfully returned to you for your final decision, which you are requested to communicate to the claimant.

I am, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. ELISHA WHITTLESEY,
First Comptroller of the Treasury.

DEPARTMENT OF THE INTERIOR,
Washington, July 30, 1856.

SIR: Your note of the 21st instant, enclosing the letter of W. F. Wagner, esq., ex-marshal for the eastern district of Louisiana, dated the 3d instant, calling your attention to an old claim of his, which he alleges, had been a long time before this and the Navy Department, was received on the 22d instant.

No evidence appearing upon the records of this department that the claim referred to had ever been here, inquiry was made at the Navy Department, and it was ascertained that the claim had been adjusted so far as that department had the power to do so; payment made accordingly, and the papers referred to the First Comptroller of the Treasury, in order that the balance of the account, $1,247 01, or such portion as might be deemed payable, might be paid out of the judiciary fund.

Recourse was then had to the papers themselves, which were kindly loaned by the Comptroller for inspection.

Upon a cursory examination of them, it is believed, that if the action of the Navy Department is correct, Mr. Wagner cannot be relieved without the intervention of Congress; none of the accounts being, as the Comptroller alleges, of such a character as to warrant their payment out of the judiciary fund.

The papers will be immediately returned to the Comptroller, where they can be inspected by you, and you can take such action as may be deemed proper.

Enclosed herewith, I send you the note of the chief clerk of the

Navy Department on the subject, and also copy of a letter from the Secretary of that department to the First Comptroller, dated the 5th of December, 1853. Mr. Wagner's letter is herewith returned, as requested.

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND,
Secretary.

Hon. MILES TAYLOR,
House of Representatives.

NAVY DEPARTMENT, *July* 24, 1856.

DEAR SIR: The letter of the Hon. M. Taylor and its enclosure. transmitted with your note of the 22d, are herewith returned.

The account to which Mr. Wagner refers was submitted to this department in May, 1852, and, so far as it contained charges against funds under the control of the department, was settled by the payment of $114, mentioned in Mr. Wagner's letter. The residue of his claim, with the vouchers, was referred for settlement to the First Comptroller, who returned the papers to the department, with his objections; but as the accounts of marshals are not finally adjusted at this department, and all charges on the account for which the department was liable, or could pay, had been allowed, it remained for the Comptroller finally to decide whether the residue of Mr. Wagner's claim could be paid out of the appropriation for "defraying the expense of suits in which the United States are concerned," &c. The papers were accordingly again transmitted to him, with a letter, of which a copy is enclosed. His final action in the case is not known to the department.

I am, respectfully, &c.,

CHAS. W. WELSH.

CHAS. S. FRAILEY, Esq.,
Department of the Interior.

TREASURY DEPARTMENT,
Comptroller's Office, August 13, 1856.

SIR: I herewith transmit to you the copies of papers connected with an account of William F. Wagner, esq., late marshal for the eastern district of Louisiana, requested by your letter of the 11th instant, which came to hand yesterday.

Yours respectfully,

ELISHA WHITTLESEY,
Comptroller.

Hon. MILES TAYLOR,
House of Representatives.

34TH CONGRESS. } HOUSE OF REPRESENTATIVES. { REPORT
3d Session. } { No. 75.

ISAAC S. SMITH, OF SYRACUSE, NEW YORK.

[To accompany bill H. R. No. 713.]

JANUARY 16, 1857.

Mr. WADE, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred the memorial of Isaac S. Smith, of Syracuse, New York, make the following report:

The petitioner in this case claims compensation for losses sustained by him, by reason of the termination on the part of the government of a contract made by him with the United States to construct a light-house on what was then, and still is, known as the "Horse-shoe reef," in the Niagara river, near Fort Erie, opposite Buffalo, in the State of New York.

The site selected for this structure was one of the most exposed on the lake waters, as well from the prevalence of the westerly gales as from ice and a strong current. The light-house was to be constructed on a plan devised by Mr. Smith and submitted to the "light-house board," and approved by that board. This plan was novel, and based on the hypothesis that the "Horse-shoe reef" was composed of solid rock situated about seven and a half feet below the surface of the water in the river. The plan of this house was such, that, if it should prove of sufficient strength, it was supposed would greatly facilitate the construction of light-houses in very exposed situations, where rock formation existed at such depth of water as would admit of practical excavation of the rock.

The whole price to be paid to Mr. Smith for the light-house was fixed at forty thousand dollars; but in view of the novelty of the plan, and to secure the government against any insufficiency of the structure to resist the force of the winds, the currents of the river, and the ice, and all these forces combined, the government stipulated to pay Smith, on the completion of the house, "to the satisfaction of such person as should be appointed by the Secretary of the Treasury to oversee and inspect the same," the sum of twenty thousand dollars, and "a further sum of twenty thousand dollars within twelve months afterwards, if, in the mean time, the work should be found to have successfully withstood the effects of the ice, winds, and storms, but not otherwise; it being a part of this agreement that the first pay-

ment is to be in full discharge of this contract, if the work shall have received essential damage from the causes aforesaid, or exhibits any deficiency in its construction."

The light-house was not constructed by Smith on the plan proposed and accepted by the government. The reason for this was, not from any want of energy or skill in Smith in the effort to carry out the proposed plan, but from the fact that, after laboring with the utmost energy and skill, and at great expense, for the greater part of the season of 1852, in the endeavor to reach "the rock of which the reef was supposed to be composed," and after penetrating to the depth of 11½ feet into the substance of the reef, making about 19 feet below the surface of the water, no rock was found, but a composition of boulders, gravel, partially pulverized shells, and sand, only. This discovery was, of course, fatal to the plan proposed by Smith and approved by the department.

It is claimed on the part of the government that it relied alone on the representations of Smith as to the rocky character of the reef; but the committee are of the opinion that the government, through its engineers in charge of the public works at Buffalo, and the light-house board, who relied upon these engineers, were equally with Smith laboring under this fundamental error. The government, from the earliest period, has had one or more of the corps of topographical engineers stationed at Buffalo; and the shoals, promontories, currents, soundings, bars, and reefs there have all been designated on many government maps and charts of this harbor and its immediate vicinity.

It is a matter of public notoriety, of which all persons inhabiting the city of Buffalo and its vicinity, and at all acquainted with the shores of the Niagara river, that these shores, at a few feet below the surface, are composed of a compact blue limestone rock. The maps and charts of this harbor and its adjacent waters designate this shoal as "Horse-shoe reef." The popular and proper meaning of this word *reef* being "rock near the surface of the water," some of these maps, &c., designate the reef as "rocky," some as "rock"—all implying the universal understanding that the location of this light-house was a rock, situated a few feet below the surface of the water. Besides, the petitioner has exhibited the depositions taken by him *ex parte* of Michael Lyons, Albert Hosmer, James L. Barton, William A. Bird, (a surveyor connected with the boundary commission appointed by the treaty of Ghent, who made a survey and map of the "outlet of Lake Erie," and knew all the reefs in that vicinity, and among them the Horse-shoe reef,) John L. Kimberly, George Coit, and Sheldon Cady. Some of these gentlemen are seamen, some masters of vessels, some the owners of steam and sail vessels, and some of them practical engineers and surveyors; all of them intimately acquainted with the Niagara river and with the "Horse-shoe reef" for many years—some as many as 35 years, others from 15 to 25 years; and they all concur in stating that the universal reputation of "Horse-shoe reef" was that it was composed of solid rock, and that no intimation was ever heard to the contrary until so demonstrated by the excavations of the petitioner.

Among the foregoing witnesses is Sheldon Cady, and several other of the petitioner's workmen on the excavations on the reef for the foundation of the light-house. All these concur in the statement that during the whole of the season of 1852, while the wind and weather permitted working on the reef, they were engaged on that work, with as many other hands as could be profitably employed thereon. All the foregoing witnesses concur in stating they are severally acquainted with the petitioner, and that he is a person of abundant ability, skill, and energy to construct a *permanent* light-house on the "Horse-shoe reef." After the petitioner, by his excavations on the reef during the season of 1852, had discovered that there was no solid rock on the reef at any practical depth below the surface of the water, he, on the 23d of August, 1852, applied for and obtained from the Secretary of the Treasury an extension of the time, and also a modification of the plan of construction, as stated in the said application. This modified contract contained the terms of payment as above stated. It is on this modified contract that the present application for relief is based. The assent of the Secretary to the petitioner's proposal bears date the 28th of August, 1852, and concludes in these words: "If Mr. Smith concludes to progress with the work agreeably to the above, the *additional time he may require* will be granted." The committee are of opinion that, under this last contract, the petitioner was allowed such extended time to complete his contract as would be indicated by the use of reasonable diligence. He was bound to employ only such number of skillful and industrious mechanics and laborers as could be reasonably and conveniently engaged on the different kinds of work necessary to be performed in order to finish the job within a reasonable time, allowing for the natural difficulties necessarily incident to the construction of the work at a point so much exposed to the capricious influences of the winds and waves, and the insuperable obstructions of the inclement seasons of autumn, winter, and spring.

The evidence in the case satisfies the committee that the petitioner is not chargeable with negligence in the prosecution of the work after the time was extended as above stated. Indeed, the testimony of Captain Benham, the engineer in charge of this work, to the probity, diligence, and energy of the petitioner, is so strong and full, and, in the opinion of the committee, so just, that they extract it from his letter to the Secretary of the Treasury of August 27, 1852, as follows:

"I would only add, that I take great pleasure in giving my testimony to Mr. Smith's evident honesty of purpose in this matter; to the desire he has constantly shown to construct the work of the best materials, and in the strongest manner; and to his untiring industry and perseverance; all of which would lead me to recommend, should his plan be deemed feasible upon such a site as this one appears to be, any reasonable indulgence as to the extension of time that he may desire."

The letter of Captain Benham, from which the above is an extract, is that to which the last above cited letter of the Secretary of the Treasury, extending the time of the completion of the contract, is a reply. *The letter of the Secretary of the Treasury, extending to Mr. Smith the time of performing his contract, was communicated to Mr.*

Smith through Mr. Ketchum, the collector of the port of Buffalo, to whom Smith gave notice of his acceptance of the extended proposition on the 13th of September, 1852. In this letter, Smith, after accepting the terms of the extended proposition, says: "Unforeseen delays may arise, which would render it impossible, with the utmost diligence, to complete it in less than one year from the time limited in the contract," (referring undoubtedly to the original contract,) "say the 1st day of November, 1853." From the language of the Secretary of the Treasury, granting *such time as Smith might require* (which would, of course, mean a *reasonable time* in view of all circumstances,) it is *not* absolutely limited to a year from November 1, 1852. But circumstances might exist, and probably would exist, if Smith exercised upon the work reasonable energy and skill, without completing it, as to entitle him to even a longer extension of time. Indeed, these words of Smith do not necessarily import anything more than an *opinion* that the 1st of November, 1853, would be the length of time which he might require.

There is no pretence set up that Smith, after the extension of time, did not presecute the work with his accustomed energy and skill. But he was not able to complete the work by the 1st of November, 1853. On the 20th of September, 1852, the acting Secretary of the Treasury wrote to Mr. Ketchum, the collector at Buffalo, that the department had accepted the proposition of Smith to have the time of performance extended to November 1st, 1853. But it should be recollected that the department, on the 28th of August, 1852, had already granted to Mr. Smith "such time as he might require;" and it does not seem to the committee that the government could equitably take from Smith the right to go forward with his contract, (he using reasonable diligence,) even after the hypothetical time (viz: 1st November, 1853) intimated in his reply to the department of September 13, 1852, had expired.

In reply to the acting Secretary's letter of the 20th September, 1852, Mr. Ketchum, on the 22d September, 1852, wrote that he had received the Secretary's letter of the 20th, *but, at the suggestion of Captain Benham, "should delay notifying Mr. Smith a few days*, in order to give the department a few days to *reconsider its decision*, as it may be inclined to do, *on receipt of Captain Benham's report*, which he informs me he has forwarded." On the 14th October, 1852, the Secretary of the Treasury answered Mr. Ketchum as follows: "Please return to the department the letter forwarded to you—the letter to Mr. Isaac S. Smith.—Thomas Corwin, Secretary," &c., &c.

To this short note Mr. Ketchum on the 18th October, 1852, replied, among other matters, as follows: "*Two* letters have been forwarded to me, the contents of which I was directed to communicate to Mr. Smith—*one* dated August 28, 1852; the other September 20, 1852. As they are the only letters received by me, to which your instructions can apply, I have enclosed both of them. A copy of the one of the 28*th August was furnished Mr. Smith;* but I *have not communicated the contents* of that of the 20th of September to him, for reasons stated in *my letter of* the 22d September to the Fifth Auditor."

On the 27th October, 1852, Captain Benham sent the report to the

Secretary of the Treasury, alluded to by Mr. Ketchum in the above quoted letter of the 22d September, 1852. *This report* condemns Mr. Smith's plan in very decided terms, and intimates that, though he (Smith) might have believed he could have accomplished it, yet that this belief might be *only a hope that he should by some means* be able to complete it as specified.

It appears from Mr. Ketchum's letter to Mr. Corwin, of October 18th, 1852, that the Secretary of the Treasury had overlooked the letter of 28th August, 1852, from the acting Secretary, extending the time of performance of Smith's contract indefinitely, or, in his own words, granting him "such time as he might require;" this being, in legal effect, a "reasonable time." But at *this date* (October 18, 1852) the Secretary's second letter, extending the time of performance of the contract, was returned by Ketchum to the Secretary, without delivery or notice to Smith.

In this last report the plan is condemned in very pointed terms, and concludes as follows: "Yet his persevering determination to attempt to execute his contract, under so many unexpected and opposing circumstances, and against the adverse opinions of many, perhaps nearly all, other persons who have examined the subject, lead me to fear that the further prosecution of this work must result in a continued, and, perhaps, much greater pecuniary loss to the contractor; a loss that, *notwithstanding every precaution that may be taken by the officers of the Treasury Department, I have reason for thinking it not only possible, but probable even, that Congress will be called upon, and perhaps successfully so, to reimburse.*"

On the 13th May, 1853, *after the lapse of some seven months* from the date of Benham's report, the Secretary transmitted to Mr. Smith the report of the "committee on engineering," respecting his plan for constructing the light-house; which plan had been *previously adopted*, and the time of construction extended as above stated.

To the committee this course appears to have been in violation of the extended contract on the part of the government, and unjust to Mr. Smith. It is in proof that during the winter of 1852–'53 Mr. Smith was pushing on the work on the modified plan, in every part of it which would admit of prosecution during that season; and he was doing this with the consent of the government.

The eagerness and energy with which Smith was prosecuting his contract in October, 1852, was such as to attract the attention of Captain Benham. Nevertheless, the government, by its agents, knowing this fact, at the same time seem to have meditated a rejection of the plan, but neglected to inform Smith of that intention. This conduct of the government, not through design, but neglect, seems wholly inconsistent with the rights of the petitioner. But the government, even after this rejection of Smith's modified plan of construction, *did not notify him* of the termination of his contract. But again, on the 21st of January, 1854—a period of more than eight months—the light-house board, by Captain Hardcastle its secretary, issued instructions to Captain J. C. Woodruff "to *report again* upon the feasibility of *Smith's plan of constructing* the light-house, and to state the time *which will be required for that* purpose."

On the 1st of February, 1854, Captain Woodruff informed the department that he had called on the "*assistant*" for the requisite information. On the 17th April, 1854, by its chairman, the light-house board reported *again*, condemning the plan of Mr. Smith. On the 3d May, 1854, the light-house board, through Thornton A. Jenkins, its secretary, report to the Secretary of the Treasury that Smith had "failed to perform his contract, after the expiration of the extended period of one year granted to him by the department."

On the 8th May, 1854, P. G. Washington, for the Secretary of the Treasury, directed the secretary of the light-house board to notify Smith "that his contract for building the light-house had been annulled."

On the 12th May, 1854, Captain J. C. Woodruff, light-house inspector of the 10th district, wrote to Captain Hardcastle, the secretary of the light-house board, informing him that he had immediately communicated to Smith Mr. Washington's letter annulling Smith's contract for building the light-house. In this letter Captain Woodruff states: "*I have been aware that Mr. Smith has been engaged at various times during the intervals of labor* on the reef in experiments to test the practicability of cutting out the stone for the footing of his shaft, excavation by drillings and blasting having failed during the last season of work on the reef. He has resumed work at the reef, clearing out the well, which had been filled by the action of the waves, with stone from the adjacent compartments of the crib. This operation has been nearly completed. He has his engine ready to transport to the crib for drilling or cutting out the stone.

"This statement seems to be called for from the nature of his reply to my letter, that the board may be advised from this office of the extent of his operations this season."

The above is a compendium of the voluminous correspondence in relation to the execution of the petitioner's contract to build a light-house on the Horse-shoe reef.

To the committee it seems very plain that, if the government intended to avail itself of the petitioner's non-performance of his contract in respect to *time*, both the law and even fair dealing demanded that it should have so informed Smith. The contract had been *expressly* extended as follows, viz: 1st. From August 23 to November 1, 1852. 2d. Taking the department's own construction, from November 1, 1852, to November 1, 1853, and from November 1, 1853, to May 12, 1854.

This implied extension is established satisfactorily to the committee, from the fact that the government's agent and inspector of this very building knew that Smith was making every reasonable effort after the 1st of November, 1853, to complete the building; yet no intimation was given that his contract would be summarily annulled in the spring, at the commencement of the only season in which labor in *erecting the edifice* could be performed.

In the opinion of the committee, there existed no reasonable ground for this last summary rescission of the contract on the part of the government. Smith, with what must be considered the consent of the government, had been permitted to go on with the attempted fulfilment of his contract, *after* the expiration of the *last extended* time,

viz: from the 1st of November, 1853, to the 12th of May, 1854—that is, through that part of the season in which it would be utterly impossible to do anything but collect and fashion the material for the edifice, but in which its erection would be a practical *impossibility*. This omission of the government to give Smith notice of the repudiation of the contract until the return of the season in which the erection of the building could, if ever, be accomplished, was legally (to say nothing of equity) equivalent to an extension of the time for the *then current season* for labor.

But if the government rests its case on the fact that it had become convinced that Smith's plan of the building was inadequate to answer the purposes for which it was designed, the reply is, Smith assumed that responsibility on himself when the structure should be completed—nay, that the government was satisfied of the *adequacy* of the plan, and, being thus satisfied, contracted for its construction on that plan. The petitioner was at all the expense of his attempt to build the light-house, through the willing assent given by the government to the petitioner's plan of building it.

But further, if the government, on such mature examination, *finally* annulled the contract on the ground of inadequacy of the petitioner's plan, then it is but reasonable and just that the government should have done one of two things—either to have permitted him to go on for a reasonable time after what it claims to have been the expiration of the last extension, or else to refund the expenses to which the petitioner had been put by this tardiness in coming to a right understanding of a matter so directly within the line of its duty and its constant employment. It further appears from the testimony of two of the witnesses, that the "*serrated bars*" of iron proposed in the modified contract were finished, or could have been finished *in one week* after the contract was finally annulled by the Secretary of the Treasury in the spring of 1854. From this testimony it also appears that the serrated bars, as well as the boiler iron and other materials, were of the very best quality of bar and boiler iron. From this state of facts, the committee are of opinion that, in a case identical with the present, between citizen and citizen, before a court and jury, the petitioner would be entitled to indemnity for his time, labor, and expenses, as well as for such actual losses as he may have *bona fide* sustained in the purchase and re-sale of the unused materials for the construction of the light-house.

It also appears from the accounts and vouchers of the petitioner exhibited to the committee, that his actual expenses for labor and materials furnished, after deducting for materials re-sold, amount to the sum of thirteen thousand five hundred and forty-three dollars and seventy-seven cents, ($13,543 77,) exclusive of his own services during the period the work was in progress, from the 23d of July, 1851, to the time he was notified of the annulling of his contract by the government, on the 11th of May, 1854—a period of two years nine months and eighteen days. The petitioner estimates the value of his personal services at the rate of two thousand dollars per year for the time he was employed in this work. The committee deem this sum higher than *it would be reasonable* to allow, all the circumstances

considered, and have added to the above sum a compensation at the rate of $1,500 per year, for the above period of two years nine months and eighteen days, amounting to the sum of four thousand two hundred dollars; making in the whole the sum of seventeen thousand seven hundred and forty-three dollars and seventy-seven cents, (17,743 77;) for the payment of which, the committee herewith report a bill and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 76.

PUIG, MIR & CO.

[To accompany bill H. R. No. 714.]

JANUARY 16, 1857.

Mr. EUSTIS, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom has been referred the petition of Puig, Mir & Co., of the city of New Orleans, have had the same under consideration, and submit the following report:

The brig "Pepita," a Spanish vessel, arrived at the port of New Orleans on the 16th January, 1853, from the city of Havana, Cuba, with four hundred bags of coffee. The brig Atalayada, a Spanish vessel from the same port, arrived in New Orleans on the 30th January, 1853, with eleven hundred and ninety-one bags of coffee, both of these cargoes being consigned to the petitioners, merchants, of New Orleans. The consignees had read in the New York Price Current, of Saturday, the 8th January, 1853, the following statement: "Coffee, duty free, when imported from place of growth in all vessels, except those of the Netherlands, Spain, and Portugal, in which case it is 20 per cent. *ad valorum;* and also free when imported in vessels of those nations from their own colonies." Being satisfied that if subject to duty the coffee could not be sold except at a great sacrifice in New Orleans, they determined, in that event, to ship it elsewhere, and unwilling to run any hazard by relying on the statement of the price current aforesaid, (the brig Pepita being the first Spanish vessel which had been consigned to their house with coffee,) they appealed for information to the officers of the custom-house, to wit: the naval officer and collector, and were informed by them that the vessels were subject to the payment of foreign duty, but that *there was no duty on the coffee*, and they accordingly granted *a free permit* for its delivery. Being thus assured, the coffee was landed and sold; that by the Pepita at a loss on the invoice price of $207 13, and that by the Atalayada at a loss on the invoice of $522 90. Some time after the sales, and after they had made out and forwarded to the shippers their account of sales of the coffee by the Pepita, and subsequent to the first sales of that by the brig Atalayada, they were notified that the said coffees were subject to the payment of duties. Under these circumstances payment of duties was resisted, and suits were brought against *the petitioners, which* resulted in judgments on the 13th

February, 1854; one for $1,310 54, and the other for $3,761 12, with legal interest.

These facts appear from certified transcripts of the said judgments, and by letter of the Secretary of the Treasury. The petitioners having appealed to the department for relief failed to obtain the same, the Secretary determining that the department had no power to grant the same; but in a letter addressed to the chairman of the Committee on Foreign Relations, dated 15th July, 1854, on the subject of this petition, the Secretary says:

"I enclose also, agreeably to your request, copies of the correspondence of the department on the subject, with a *draft of a bill for the relief which, in the opinion of the department, should be granted to the petitioners.*"

Accordingly a bill for the relief of the parties was passed by the Senate during the last Congress, and sent to this House, and has remained unacted on to this time.

Your committee, therefore, report the following bill, and recommend its immediate passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 77.

CAPTAIN JAMES MUGFORD—HEIRS OF.

JANUARY 16, 1857.—Laid upon the table, and ordered to be printed.

Mr. ALLEN, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the claim of the heirs of Captain James Mugford and crew, asking for the payment of prize money, having had the same under consideration, beg leave to report:

That they have examined the claim and the proofs in support thereof, and have come to the conclusion that the heirs are not entitled to relief upon the case as presented. They, therefore, ask to be discharged from its further consideration.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 78.

WILLIAM CONWAY, DECEASED—HEIRS OR LEGAL REPRESENTATIVES OF.

[To accompany bill H. R. No. 537.]

JANUARY 16, 1857.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

Upon the bill to revive an act entitled "An act for the relief of the heirs, or their legal representatives, of William Conway, deceased," referred to the Committee on Private Land Claims, they report as follows:

On the 2d July, 1836, Congress passed an act authorizing the representatives of said Conway to locate, within twelve months from the passage of the act, on any unappropriated public land in the State of Louisiana subject to private entry, one thousand and seventy acres in a body, in contiguous tracts, according to the legal subdivisions of the public surveys; and also two thousand seven hundred and eighty-nine acres, under the same limitations, in consideration of the release, within twelve months, by the said heirs or legal representatives, in favor of the United States, of the land originally included in three grants from the government of Spain, and confirmed by the commissioners for investigating land titles in the district west of Pearl river, by reports numbered 48, 49, and 50. And that, in accordance with said act of Congress, (as appears from a communication made by the Commissioner of the General Land Office,) a certificate was issued by the register and receiver of the land office at Monroe, Louisiana, on the 26th of June, 1837, to Augustus S. Phelps, the representative of the heirs aforesaid, for one thousand and sixty-six acres and 7.100 of an acre, in full satisfaction of the 1,070 acres granted by said act of July, 1836, which was located upon certain described lands; and that the said lands thus described have since been sold by the government to other parties, and been patented to them; and that there was nothing in his office showing that any attempt had been made to locate the remaining portion of 2,789 acres. In the absence of the papers submitted by the Hon. Miles Taylor, when the bill was first introduced in August last, giving the reasons why no lands had been obtained and no attempt made to locate the largest portion of the grant, and which cannot now be found by the clerks of the House, the com-

mittee have taken the statement of Mr. Taylor himself, who, from having been at one time counsel for some of the parties in interest under the said act, says that it was in consequence of a legal contest then going on, and which continued for several years, between those parties.

As the parties, by the government sale to others, lost the location made within the period fixed by law, and *could* not locate any portion of remainder, for the reason stated, your committee see no reason why the said act of 1836 should not be revived for another year's time. And although it is now impossible to find in said State, in compact bodies, such a quantity of land, of much value, your committee have not thought proper to recommend any change in the original law, and herewith report back the bill, without amendment, for favorable consideration of the House.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT. No. 79.

REGIS LOISEL OR HIS LEGAL REPRESENTATIVES.

[To accompany bill H. R. No. 715.]

JANUARY 16, 1857.

Mr. PORTER, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims have had under consideration the claim of Regis Loisel or his legal representatives, and report as follows:

Your committee find that on the 25th of March, A. D. 1800, the lieutenant governor of Upper Louisiana granted to Regis Loisel a certain tract of land on the Missouri river, about twelve hundred miles from its mouth, including Cedar island; that the same was surveyed by Don Antonio Soulard, surveyor general for Upper Louisiana, and a plat made thereof; that all the papers and documents relative to the same were recorded in the recorder's office established for the recording of land titles in Upper Louisiana, according to the act of Congress in such cases made and provided. Your committee further find that in August, 1806, and in September, 1810, application was made to the board of commissioners to have said claim confirmed; that the same was rejected, and claimants required to furnish further proof. That in July, 1833, and November, 1834, the same was again presented for confirmation, and additional proof given; but the same was not confirmed, because said board held that they did not have jurisdiction of the case. Your committee further state, that over three hundred claims that were reported favorably on by the committee that acted under the acts of 1832–'33, and confirmed by the act of 1836, were rejected by the former board of commissioners; that said grant is absolute and unconditional; and that it appears from the same, and the petition to the lieutenant governor, that the said Loisel had established a fort on said tract of land in the Indian country, at his own expense, and that he had rendered important services to his government in discovering and exploring the Indian country and establishing amicable relations between them and his government; that in so doing he had suffered heavy losses. Your committee state that, from the petition to the lieutenant governor, the grant by him, and the survey by the surveyor of Upper Louisiana, and the evidence taken before the board of commissioners, and now of record, they are satisfied that said petitioner's grant and survey were made in good faith and are genuine. Your committee are of opinion

that from the stipulations of the treaty by which we acquired Louisiana, and the decisions of the Supreme Court of the United States in regard to these inchoate Spanish titles, that rights were vested in the said Loisel; that justice and good faith on the part of this government require that said rights should be protected, and that said claim should be confirmed to the said Loisel or his legal representatives. The 3d article of the treaty of the 30th April, A. D. 1803, by which France ceded to the United States the Louisiana territory, provides that "the inhabitants of the ceded territory shall be incorporated in the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the mean time shall be maintained and protected in the free enjoyment of their liberty, property, and religion which they possess." (See Laws United States at Large, vol. 8, page 202.)

In the case of Chouteau's heirs *vs.* the United States, (9 vol. Peters' U. S. Reports, page 137,) Judge Marshall says: "The lieutenant governor was also a sub-delegate, and as such was authorized to make inchoate grants. They are property, capable of being alienated, of being subject to debts, and is as such to be held as sacred and inviolate as other property." If Judge Marshall is right that these inchoate grants are *property*, then they are protected by treaty; and when the inhabitants of the ceded territory were incorporated into the United States, we were bound by the treaty to complete their titles. Our national honor demands it. It cannot be that the United States will violate the treaty, and confiscate the lands of the inhabitants in the ceded territory. In the case of Delassus *vs.* the United States, (9th Peters, page 117,) Judge Marshall says: "The stipulations of the treaty ceding Louisiana to the United States affording that protection or security to claims under the French or Spanish governments to which the acts of Congress refer, are in the first, second, and third articles. They extend to all property until Louisiana became a member of the Union, into which the inhabitants were incorporated as soon as possible, and admitted to all the rights, advantages, and immunities of citizens of the United States. The perfect inviolability and security of *property* is among these rights. The right of *property* is protected and secured by the treaty; and no principle is better settled in this country than that an *inchoate title to land* is property. This right would have been reserved independent of the treaty. The sovereign who acquires an inhabited country acquires full dominion over it; but this dominion is never supposed to divest the vested rights of individuals in property. The language of the treaty ceding Louisiana excludes any idea of interfering with private property. The concession to the petitioner was legally made by the proper authorities. A grant or concession made by the officer who is by law authorized to make it, carries with it *prima facie* evidence that it is within his power. He who alleges that an officer intrusted with an important duty has violated his instructions, must show it."

And they herewith report a bill confirming said grant or concession.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 80.

MANUEL DE LISA AND JOACHIN DE LISA, OR THEIR LEGAL REPRESENTATIVES.

[To accompany bill H. R. No. 716.]

JANUARY 16, 1857.

Mr. PORTER, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims submit the following report:

That on the 16th day of July, 1799, Manuel de Lisa and Joachin de Lisa petitioned the lieutenant governor of Upper Louisiana to grant to each of them, separately, six thousand arpents of land on the banks of the Missouri river; that on the 17th day of the month and year last aforesaid the lieutenant governor, Zeno Trudeau, granted to said Joachin and the said Manuel de Lisa six thousand arpents of land each, and ordered the same to be surveyed by the surveyor general, Don Antonio Soulard; that said grants were absolute, and not conditioned; that it does not appear that said Soulard ever surveyed for said Lisa said pieces of land. Your committee further report, that by the treaty of 1803, under which the United States acquired Louisiana, it is provided that the citizens of the ceded territory shall be protected by the government of the United States in all their rights to their property of any nature, kind, and description. Your committee further find that the Supreme Court of the United States have repeatedly held that the Spanish citizens acquired an inchoate vested right in property thus granted to them, and which the government of the United States, according to the letter and spirit of the treaty, was bound in good faith to recognise and protect. Your committee find that the papers relative to said grants are of record in the recorder's office of land titles of Upper Louisiana; that as early as 1806 application was made to the board of commissioners to have said grants confirmed; that the same was from time to time renewed, to wit: in 1808, 1810, 1832, and 1833. Your committee find that, in November, 1833, final action was had by the board on said claims, and that the commissioners unanimously recommended the same to Congress for confirmation; but the reason the same was not confirmed your committee are unable to perceive, unless it be that said claims had never been surveyed *or located*. Your committee find that both of *said claims are in the first class* of claims recommended to Congress

for confirmation by said board; that from the evidence produced before said board, and of record, it appears to the satisfaction of your committee that said grants are genuine, and made in good faith. Your committee are of opinion that good faith on the part of this government requires that said claims shall be confirmed.

The third article of the treaty of the 30th April, 1803, by which France ceded to the United States the Louisiana territory, provides: "That the inhabitants of the ceded territory shall be incorporated in the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, *property*, and religion which they possess."—(See United States Laws at Large, vol. 8, page 202.)

In the case of Chouteau's heirs *vs.* The United States, (9 vol. Peters' United States Reports, page 137,) Judge Marshall says: "The lieutenant governor was also a sub-delegate, and, as such, was empowered to make inchoate grants. They are property, capable of being alienated, of being subjected to debts, and is, as such, to be held as sacred and inviolate as other *property*." If Judge Marshall is right, that these inchoate grants are *property*, then they are protected by the treaty; and when the inhabitants of the ceded territory were incorporated into the United States, we were bound by the treaty to complete their titles. Our national honor demands it. It cannot be that the United States will violate the treaty, and confiscate the lands of the inhabitants in the ceded territory.

In the case of Delassus *vs.* The United States, (9 Peters, page 117,) Judge Marshall says: "The stipulations of the treaty ceding Louisiana to the United States affording that protection or security to claims under the French or Spanish governments to which the acts of Congress refer, are in the first, second, and third articles. They extend to all property until Louisiana became a member of the Union, into which the inhabitants were incorporated as soon as possible, and admitted to all the rights, advantages, and immunities of citizens of the United States. The perfect inviolability and security of *property* is among these rights. The right of property is protected and secured by the treaty, and no principle is better settled in this country than that *inchoate title to land is property*. This right would have been reserved independent of the treaty. The sovereign who acquires an inhabited country acquires full dominion over it; but this dominion is never supposed to divest the vested rights of individuals in property. The language of the treaty ceding Louisiana excludes any idea of interfering with private property. The concession to the petitioner was legally made by the proper authorities. A grant or concession made by the officer who is by law authorized to make it, carries with it *prima facie* evidence that it is within his power. He who alleges that an officer intrusted with an important duty has violated his instructions, must show it."

And they herewith report a bill confirming said grant or concession.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 81.

JAMES B. WOOD.

[To accompany bill H. R. No. 717.]

JANUARY 16, 1857.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of James B. Wood, respectfully report:

The memorialist claims payment for fifty oxen and seven mules, under the following circumstances:

It appears from the testimony that Captain A. W. Reynolds, acting assistant quartermaster in the United States army at Santa Fé, New Mexico, in July, 1850, made a contract with the petitioner to deliver fifty head of oxen at the military depot at Manzana, about seventy or eighty miles below Santa Fé, in said Territory, for which he was to pay him $50 each.

At this time the Indians were very hostile on the route between these places, and the undertaking was a hazardous one, so much so that the quartermaster could not find any one but the petitioner who would agree to deliver oxen at the above depot.

In view of the hazard, it is established by the testimony of Samuel Hays, Charles N. Sims, James Nesbit, and A. Hinsellwood, that the said quartermaster made an express agreement with the petitioner, to induce him to incur it, that he would pay him for all losses, both of oxen and mules, should he sustain any by reason of the hostile Indians on the route to Manzana.

It appears the petitioner left Santa Fé with twenty oxen and five men, mounted on mules, with one pack mule, and went as far as Gallisteo on the way, where he got thirty more oxen, and then proceeded on to deliver the fifty. One of the witnesses, Samuel Hays, accompanied him; and when the party had arrived within a very few miles of Manzana a body of hostile Indians suddenly sprung upon them, dispersing the oxen and mules, and wounding the petitioner in the leg with an arrow. He and his party got into Manzana, but with the loss of everything.

Some days afterwards the petitioner returned to Santa Fé, and demanded pay for his oxen and mules from Captain Reynolds, who refused it, alleging that he had been superseded in office, and was thus prevented from paying him.

It appears from the certificate of Dr. Edwards, the surgeon in the United States army on duty at the time, that the wound received is an incurable one, and incapacitates the petitioner one-third from obtaining his subsistence by manual labor.

By letters from the Third Auditor it is established that the above prices were paid at the time for mules and oxen by that department.

The committee see no reason why the removal of Major A. W. Reynolds from that post should invalidate the contract made with the memorialist. The necessities of the service required the running of some risk to get the oxen and mules at Manzana. It was within the discretion of Reynolds in such an exigency to make the terms that he did with the memorialist. The committee therefore report a bill for his relief.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 82.

SIMEON STEDMAN.

[To accompany bill H. R. No. 718.]

JANUARY 16, 1857.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Simeon Stedman, having had the same under consideration, report:

That the petitioner was a private in Captain Christopher Ripley's company, thirty-seventh infantry, in the war of 1812, in which he enlisted, (for the second time,) on the 1st of June, 1814, for *during the war*. That on or about the 7th April, 1815, he received a pass signed by Captain E. Warren, in the absence of Major Roswell Lee, then commanding Fort Griswold, Conn., giving him permission to be absent about ten days to visit his mother, who was then sick. That he went under authority of that pass to Southington, where *he* was taken sick and remained so until the month of May or June of the same year. That as soon as he was able—before he was actually well—he returned to Fort Griswold to rejoin his company, but upon his arrival at the fort he found his regiment had been disbanded. That in consequence of his absence beyond the time to which his pass extended he was reported as a deserter, and consequently has received no compensation for the services rendered by him in his second enlistment.

Accompanying the petition there are certified copies of three affidavits—the originals on file in the office of the Third Auditor—fully supporting the petitioner's statements.

The committee, after a thorough examination of this case, are of the opinion that the petitioner is fully entitled to pay for his services in the same manner as if he had been present when his regiment was disbanded; but being "absent," it is usual for the officer in command, not knowing the cause of such absence, to report the absentees as "deserters," but the evidence of three disinterested witnesses fully satisfies the committee that the entry of desertion against this petitioner is, although customary, unfair under the circumstances.

The committee report a bill accordingly for his relief

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 83.

MARY ANN WILLIAMS.

[To accompany bill H. R. No. 719.]

JANUARY 16, 1857.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Mary Ann Williams, of the St. Regis tribe of Indians, respectfully report:

The petitioner is the widow of the late Thomas Williams, (known by the name of Cahnawaga,) a chief of the St. Regis tribe of Indians, and comes before Congress for pay for rations which were promised by the American government to herself and husband, but which were never furnished, and also for the loss of property and annuities in Canada, in consequence of their acceptance of the offers and requests of this government to abandon the British territory during the war of 1812, and exercising their influence over other members of the tribe not to engage in the war, and to establish themselves permanently in the United States.

The committee refer the House to the memorial of the petitioner herewith amended, and the evidence marked from A to F inclusive, which, to the minds of your committee, is so conclusive of the justice of Congress granting some relief to this helpless widow of the chief of a race of Indians which did the country much service as to render all comment unnecessary. That the inducements were held out to acquire the friendship of these Indians, and secure their removal from Canada, where they might have been a source of great annoyance to us, is clear. That the petitioner and her husband did lose property and forfeit annuities from the British government, is also evident. That the United States government never fulfilled its promises, is equally conclusive. The committee accordingly report a bill for the relief of the memorialist.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:

The memorial and petition of Mary Ann Williams, of the St. Regis tribe, in the county of Franklin, in the State of New York, respectfully showeth:

That your memorialist is the widow of the late Thomas Williams, an Iroquois chief of the aforesaid tribe; that he was a native of Canada, and of the Iroquois nation of Indians; and that in consequence of the menacing aspect of affairs between the United States and Great Britain, the government of this country became solicitous to gain the co-operation or secure the neutrality of the various tribes of Indians in the vicinity of the northern frontier. With this view, President Jefferson, in 1808, addressed an earnest letter to those Indians, the original of which is in the possession of your memorialist, (marked A,) in which, after recommending to them to maintain a neutral attitude in case war should occur between the two countries, he says: "Should the English insist on their taking up the hatchet against us, if they choose rather to break up their settlements and come over to live in peace with us, we will find other settlements for them, and they shall become our children."

Your memorialist further represents that it was well known to the American government that the husband of your memorialist, Thomas Williams, was one of the chiefs of the Iroquois nation, and that he possessed a very great influence with his own and other tribes within the British dominions. In fact, he was regarded as capable of determining the part which they should take in the anticipated war; and it became important, therefore, to engage his efficient co-operation and good wishes. He was consequently, when hostilities commenced, especially invited to join the American standard, and to repress, by his influence and efforts, any warlike movements which might be contemplated by his own or other tribes against the United States.

For the services which he was asked to render, he was assured that he and his family should receive a support during the war, and a full indemnity for any losses he might sustain in consequence of connecting himself with this country. Feeling entire confidence in these assurances, he came to the United States in the beginning of 1813; engaged warmly in the American cause, and exerted, with great success, his influence with his own and neighboring tribes in Lower Canada. It is well known to the inhabitants on the northern frontier that those nations took no part against the United States in that war.

In consequence of thus abandoning the cause and leaving the territories of Great Britain, the husband of your memorialist was deprived as well of his own property as that in which he participated as one of the tribe; and at the termination of the war, his conduct having awakened the resentment of the British functionaries, and particularly those connected with the Indian Department, he was prohibited from returning among them. Thus compelled to fix himself in the State of New York, where he resided but a short time before his death, greatly advanced in years, and was for many years wholly incapable of maintaining himself, his own property has been sacrificed in furthering the views and advancing the interest of the United States.

Your memorialist would further represent, that in confirmation of the foregoing statement that the deceased chief and his family were to be sustained and supported by the government, an order was issued by the War Department on January 23, 1816, to the commanding officer at Plattsburg, "to issue six rations per day to Thomas Williams,

an Iroquois chief, for the support of himself and family, until further orders," (marked B.)

Under this order the deceased chief received rations only one year after the date of the said order, and this in consequence of the military post at Plattsburg being evacuated; and from that period up to the time of his death he received no more rations from the government, although the order was "never revoked," (paper C.) Your memorialist conceives that the accompanying letter (marked D) from Mr. Graham, the Secretary of War, to Thomas R. Gold, esq., sufficiently showeth that the chief and his family "have still a well-founded claim to compensation from the government." And your memorialist being greatly advanced in years, and wholly incapable of maintaining herself, therefore, in her own behalf and family, prays that she may yet be fully allowed the rations according to the aforementioned order of the War Department, and that she and her family be liberally remunerated for the services rendered by her late deceased husband to the United States.

Your memorialist and petitioner, as in duty bound, will ever pray.

her
MARY ANN + WILLIAMS.
mark

Signed in presence of—
ELEAZER WILLIAMS.
Hogansburg, September, 1849.

A.

To Colonel Louis Cook and Jacob Francis, of the St. Regis Indians.

MY CHILDREN: I take you by the hand, and all the people of St. Regis within the limits of the United States, and I desire to speak to them through you. A great misunderstanding has taken place between the English and the United States; and although we desire to live in peace with all the world and unmolested, yet it is not quite certain whether this difference will end in peace or war. Should war take place, do you, my children, remain at home in peace, taking care of your wives and children. You have no concern in our quarrel; take, therefore, no part in it. We do not wish you to spill your blood in our battles; we can fight them ourselves. Say the same to your red brethren everywhere; let them remain neutral and quiet, and we will never disturb them; and should the English insist on their taking up the hatchet against us, if they choose rather to break up their settlements and come over to live in peace with us, we will find other settlements for them, and they shall become our children. The red nations who shall remain in peace with the United States shall forever find them true friends and fathers; those who commence against them an unprovoked war must expect their lasting enmity.

My children, I wish you well and a safe return to your own country.

TH. JEFFERSON.

MAY 5, 1808.

B.

DEPARTMENT OF WAR,
January 23, 1816.

SIR: You will please to direct that six rations per day be issued to Thomas Williams, an Iroquois chief, for the support of himself and family, until further orders. The rations may be delivered to him from time to time, as he shall be able to carry them to his residence, which I understand is too distant to be received daily, or even weekly. You are also authorized to present to him three suits of clothing, such as are supplied to the soldiers of the United States.

I have the honor to be, &c.,
WM. H. CRAWFORD.

OFFICER COMMANDING AT
Plattsburg, New York.

C.

DEPARTMENT OF WAR, OFFICE INDIAN AFFAIRS,
December 12, 1835.

SIR: Your letter of the 3d ultimo, to the Secretary of War, has been referred to this office.

After diligent search it cannot be found that the order in 1816, authorizing the furnishing of rations to Thomas Williams, has ever been revoked.

Very respectfully, your obedient servant,
ELBERT HERRING.

Mr. ELEAZER WILLIAMS,
Hogansburg, New York.

WHITESTOWN, NEW YORK,
April 25, 1817.

SIR: Mr. Thomas Williams, possessing extensive influence over the Indians in Canada, and there resident at the commencement of the late war, was induced by General Dearborn to restrain the Indians from aiding the British in the war; General D. pledging himself to provide for him, Williams. Williams was finally obliged to abandon his property, about $13,000, and to remove to the United States. He repaired to Washington in the winter of 1816, and presented his claims, which were referred to the Secretary of War. The claim was suspended for the proofs as to his property in Canada; proof was afterwards furnished. I am requested to ask what determination has been made on his claim, and what may be expected from the government? Please, sir, inform me.

I am, sir, respectfully, your obedient servant,
THOS. R. GOLD.

Hon. GEORGE GRAHAM,
Acting Secretary, &c.

D.

An extract from a letter from George Graham to Thomas R. Gold, esq.

DEPARTMENT OF WAR,
August 16, 1817.

SIR: Your letter of 25th April was duly received. The papers in the cases of Thomas and Eleazer Williams had all been before Mr. Crawford, but were not acted upon by him while Secretary of War. On the receipt of your letter, I had the papers collected, with the intention of laying them before the President previous to his departure on his tour; but the account of Eleazer Williams and agreement with General Dearborn, which he states to have been forwarded to this department by Mr. Savage, are not with the papers, nor have I since been able to find them, and there is no memorandum of their having been received.

From the answers of General Dearborn and General Mooers to the letters addressed by this department to them in relation to these claimants, it appears that they *have a well-founded claim to compensation from the government;* but how far the executive government can grant them compensation for the property lost in Canada is doubtful.

With sentiments of great respect and esteem, &c.,

GEORGE GRAHAM.

THOMAS R. GOLD, Esq.,
Whitestown, New York.

E.

PLATTSBURG, *September* 8, 1815.

We hereby certify that Thomas Williams, a chief of the Iroquois nation of Indians, known by the name of Cahnawaga, in consequence of his attachment to the United States during the late war, left his residence, in the province of Lower Canada, and came to the United States, where he now remains; the consequence of which, it is said, was the loss of considerable property, large expenses, and other personal inconveniences.

BENJ. MOOERS,
PETER SAILLY.

I, Eleazer Williams, of Lawrence, in the county of Brown and State of Wisconsin, testify and say: That I was in the secret service of the United States in the war which commenced in 1812, and that I had the charge and commanded the secret corps of observation on the northern frontier during the said war; and that it was through me that my father, Thomas Williams, an Iroquois chief, was especially invited, in behalf of the general government, by Major General Dearborn, of the United States army, and Major General Mooers, of the New York division, to join the American standard, and to repress, by his influ-

ence and efforts, any warlike movements which might be contemplated by his own and other tribes against the United States. For the services which he was asked to render, he was assured that he and his family should receive a support during the war, and a full indemnity for any losses which he might sustain in consequence of connecting himself with the United States. Having a great confidence in these assurances, he came to the United States in 1813, engaged warmly in the American cause, and exerted, with great success, his influence with his own and neighboring tribes in the Canadas.

And further, I testify that instead of receiving his support and family's from the government, as he was promised, it was only occasionally some rations were issued to him, and these were obtained, with much difficulty, from the commissariat department; and to prevent their suffering for want of food and clothing, I was compelled to sustain them; and that the War Department had such a strong evidence of his claim upon the government for the promised rations, it issued an order on January 23, 1816, for "*six rations per day, for the support of himself and family, until further orders.*" Which order was intended, and so understood at the time by the War Department and Thomas Williams, that it should continue for a series of years; but, instead of this, its continuance was but for a short time, in consequence of the post at Plattsburg, whence he drew his rations, being evacuated by the troops; and that, according to the best of my knowledge, said Thomas Williams was never indemnified for his losses of property, or remunerated by the United States for his services, as he was promised by the government through me, as one of its secret agents, when he was invited to join her standard in 1812; and that the sacrifices and losses he sustained in property for so doing were estimated to be between seven and eight thousand dollars, and besides the annuity of two hundred and fifty dollars which he was allowed, and received, from the British government.

In *confirmation* of the value of the above property, *affidavits* were made by persons of probity and honor, from Canada, before the Honorable Pliny Mooers, of Champlain, in the county of Clinton and State of New York, in March, 1816. The same were forwarded to the War Department by Mr. Savage, then a member of Congress from the State of New York. It is to these papers that Mr. George Graham, Secretary of War, in his letter to the Honorable Thomas R. Gold, (of 16th August, 1817,) refers, when he says: "The papers in the cases of Thomas Williams and Eleazer Williams had been all before Mr. Crawford, but were not acted upon by him while Secretary of War. I had the papers collected, with the intention of laying them before the President previous to his departure on his tour."

ELEAZER WILLIAMS.

Personally appeared Eleazer Williams, to me well known, and made oath to the truth of the foregoing deposition, by him subscribed before me this 18th day of January, 1850.

EDWARD OUTHWAITE,
Notary Public, Brown county, *Wisconsin.*

A letter from the Hon. John Savage, the late Chancellor of the State of New York, to D. L. Vanderheyden, Esq.

SALEM, *July* 1, 1816.

DEAR SIR: Yours of the 25th ultimo is but just received. All I can say in answer is, that the Secretary at War, to whom the petition of Thomas Williams was referred, made no report. I presented to him the affidavits sent me by Mr. Williams, but he gave me no intimation on the subject from which I can give an opinion as to the probable result. My own opinion is, that compensation ought to be made him upon principles of justice as well as policy. Whether the Secretary entertains the same opinion I know not. Much will depend upon his report.

I am, dear sir, very respectfully, yours, &c.,

JOHN SAVAGE.

D. L. VANDERHEYDEN, Esq.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 84.

MRS. ELIZABETH M. CHURCHILL, WIDOW OF CAPTAIN WM. H. CHURCHILL, UNITED STATES ARMY.

[To accompany bill R. H. No. 720.]

JANUARY 16, 1857.

Mr. BAYARD CLARKE, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Elizabeth H. Churchill, widow of Captain Wm. H. Churchill, United States army, deceased, respectfully report:

The husband of the memorialist was, during the Mexican war, an assistant quartermaster of the United States army, discharging the duties of commissary at Brazos Santiago. Being charged with the selling of a large quantity of subsistence stores, which, in accordance with regulations, had to be done by public auction, he had to select an auctioneer, which he accordingly did, and made T. W. Sweet, his clerk, the auctioneer for the sales. There were two sales—one in March, and the other in June, 1847. For his services as auctioneer, he allowed the said Sweet the usual commissions, which amounted to $326 27. He died before an examination of his accounts; and when they were examined, the amount which he had paid his clerk for auctioneer's fees was disallowed by the accounting officers of the treasury, on the ground that Sweet could not be allowed pay as clerk and auctioneer for the same period. The committee think that this objection is untenable, inasmuch as Sweet was not a regular officer of the government, with a salary fixed by law. Indeed, it does not appear that he had any regular salary. It was regulated by the discretion of the officer employing him, according to the increase or decrease of the labor or hardships of the position. It was, therefore, in the opinion of the committee, competent for Captain Churchill to employ him in any extra service, and pay him therefor. But, independent of this, it is admitted that if the amount of fees had been paid to any other person acting as auctioneer, the item in the account of Captain Churchill for the amount so paid would not have been disallowed. In view of this fact, the committee do not deem it just to withhold this amount, which was paid by her husband, from the

widow of the deceased, especially when it is recollected that the interests of the government could be better subserved by the employment of a man as auctioneer who was in the confidence of the commissary than it could have been by one selected outside, at a time like that, when speculation on the property of the government was so rife.

The committee accordingly report a bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT. No. 85.

JESSE HAYNES.

[To accompany bill H. R. No. 653.]

JANUARY 16, 1857.

Mr. PORTER, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred House bill No. 653, for the relief of Jesse Haynes, of Mississippi, have had the same, and the papers therewith referred, under consideration, and respectfully report:

That it appears from the evidence before your committee, that the said Haynes desires to purchase the northwest quarter of the southeast quarter of section No. *eleven*, township three, (3,) north of range 15 east; and that he authorized and requested one Charles F. Mayerhoff, of Clarke county, Mississippi, to purchase said tract of land for him at the public land sales at Augusta in said State, in May, 1855. That said Mayerhoff, under a misapprehension, bought at said sale the northwest quarter of the southeast quarter of section 15, township No. three of range No. 15 east, for said Haynes, and took a duplicate receipt accordingly; which receipt embraces a piece of land distant from the piece desired by said Hayner, and which would not answer at all the end he had in view. He has made application to the Commissioner of the General Land Office for a corresponding *change of his entry;* in other words to surrender his purchase as actually made, and to be allowed to enter the tract which he intended to buy, and authorized his said agent to buy. His said application for said *change*, was disallowed for the reason that it was a purchase at *public sale*, and not a private entry. The act of Congress in such case made and provided, only allowing a change of *an entry* made under a mistake, and not such change where the land is purchased at *public sale*. The case, your committee think, comes within the equity of the existing law, but not within its terms. And as the bill referred does justice to the citizen, without doing any injustice or occasioning any loss to the government, they report the said bill back to the House, and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 86.

CLINTON GUARDS—MICHIGAN.

[To accompany bill S. No. 404.]

JANUARY 16, 1857.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the bill of the Senate No. 404, for the relief of the officers and pr vates of the Clinton Guards, of the county of Macomb, in the State of Michigan, respectfully report:

The Clinton Guards was one of the volunteer companies which was called out in the year 1838, by the governor of the State of Michigan, to aid in preserving inviolate the neutrality laws of the United States, which were involved in the disturbances on the Canadian frontier, known as the "patriot war." The evidence shows that the services of volunteers were enlisted at the time at the request of the government of the United States. The committee append the evidence of Major General John Stockton in proof of the services of the said Clinton Guards, and recommend that the bill of the Senate do pass without amendment.

—

STATE OF MICHIGAN, *County of Macomb, ss.*

On this fifteenth day of July, in the year one thousand eight hundred and fifty-six, personally appeared before me, the undersigned, a notary public in and for the county aforesaid, John Stockton, a resident of Mount Clemens, in said county, who being duly sworn by me, on his oath says: That at and during the time of the Canadian border disturbances, commonly called the patriot war, in the year eighteen hundred and thirty-eight, he resided at Mount Clemens aforesaid, and was then, and still is, the major general commanding the fourth division of Michigan militia; that upon the written order of Governor Stevens T. Mason, to this affiant directed, with which was enclosed the written request of the United States marshal for the district of Michigan, this affiant, as such commanding general, called into the service of the United States two independent companies then organized

at said Mount Clemens, of which the Clinton Guards, commanded by Captain William G. Page, was one, for the purpose of maintaining the neutrality laws of the United States; that in pursuance of said order, the said Clinton Guards were under military discipline and drill for about one month, commencing in January, in the year 1838. And this affiant further says, that the written authority of the said Governor Stevens T. Mason and request of the said marshal of the United States were destroyed by fire on the night of the 10th of January, A. D. 1853, when the office of this affiant, with his public and private papers were consumed.

JNO. STOCKTON.

Subscribed and sworn to before me this 15th day of July, A. D. 1856.

ANDREW S. ROBERTSON,
Notary Public, Macomb county, Michigan.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 87.

THOMAS MOODY.

[To accompany bill H. R. No. 721.]

JANUARY 16, 1857.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom were referred the memorial and proofs of Thomas Moody, one of the survivors of the revolutionary soldiers, praying for pension, having had the same under consideration, beg leave to report as follows:

It appears that the petitioner is now 97 years old, and he sets forth in his declaration three tours of service, amounting in all to seventeen months. The first tour as a private in Virginia, in the year 1776, in an expedition to Tennessee against the Cherokee Indians, and was in an engagement at White Oak Glades; this tour occupied five months. The second tour of service he declares was as captain of Virginia troops, in which he was engaged as a recruiting officer about six months in the year 1777. The third tour was as a private in Virginia troops in 1780, amounting to six months' service.

The petitioner therefore appears to have served as a private five months in 1776, as a captain recruiting in 1777 six months, and again as a private in 1780 six months; thus making eleven months as a private, and six months as a *captain* recruiting. The six months' service as a captain entitles him to a pension at the rate of $120 per annum, and the eleven months as a private to $36 66⅔ per annum, making together $156 66⅔ per annum, the amount to which he is entitled.

The declaration of the petitioner is corroborated by positive proof that he was in the military service of the United States early in the revolutionary war, his first tour having been performed in the memorable year of the declaration of American independence, his second in the year following, and his third in the year 1780.

The proof which he submits in support of his claim, while it establishes *clearly* that he was in the service during those years, does not show how long he was actually engaged in each tour; but at this remote *period, when nearly all* of his companions in arms have been *gathered to the tomb, it* cannot be expected that he can produce evi-

dence of an accurate and minute character. For a magnanimous and grateful nation it is enough to know that the aged and trembling limbs of one who aided to shield his posterity from the grasp of despotism, now stretched out to his happy and prosperous country for relief in his extreme and helpless age, no matter to what extent he of time he actually served, is still among us and in want. The soldiers of that period left on the page of the history of their country no doubt whatever of their active and continuous service. Their remarkable exploits, and the successful termination of a long and sanguinary war, elicited the wonder and admiration of the civilized world. Had they served a despot as faithfully and gloriously as they served the spirit of rational freedom, they would have been well cared for during the balance of their lives. Surely the people of this country, through their representatives, may be regarded as quite as liberal and grateful towards those who participated in the memorable struggle for our independence, especially when, in the last hours of their existence, they need comfort and repose.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 88.

NANCY WEEKS.

[To accompany bill H. R. No. 722.]

JANUARY 16, 1857.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

Francis Weeks, aged 96 in 1853, (act 1832, Geo.,) claims that he entered the service in 1778, and served *four years;* was an *ensign*—commission and discharge lost or mislaid.—(See his declaration in detail.)

Proofs.—No *record* proof in existence.

William Coggin, aged 101 *in March*, 1856, a *pensioner* drawing eighty-eight dollars per annum as a *lieutenant of infantry and cavalry*, swears that he was well acquainted with Francis Weeks; that he served in the revolution at the battles of Brier creek, siege of 1796, and at Eutaw Springs; that he was with Weeks when they caught and hung *seven tories.* In a former certificate, in 1854, Lieutenant William Coggin swears that Francis Weeks is the identical person who was in the service at '96, and was BEARING COLORS.

William McLeod, a pensioner, swears as to Francis Weeks; that he was at the battle of Brier creek, and also at the battle of Eutaw Springs; and that he served *as stated in his declaration*, as ensign.—(See affidavit made in October, 1853.)

John Haines, a pensioner, aged 117 *years.* He swears that Francis Weeks, *acting as an officer*, and himself were at the siege of 1796; that they were present at the taking and hanging of seven tories at *Brier creek*, &c.—(See affidavit dated January, 1855.)

In another affidavit, dated October, 1854, he swears that Weeks and himself were in service *three years, as an officer of some kind.*

William W. Webb swears that, in 1853, in a conversation with Francis Weeks, he asked him if he was a brother of a Mr. Penly, who killed himself, and who was a *revolutionary soldier;* and he said Weeks then stated that his name was Weeks, and that he too was a soldier of the revolution. That witness rather disputed his statement, when said Francis Weeks took out two papers which the witness took in his own hands and read, one of which was his discharge, and the other was a commission; and that the witness then believed that said commission and discharge were genuine, and that said *Francis Weeks was a revolutionary* soldier.

Said W. W. Webb is sworn to as a *credible person* by Benjamin Johnson, justice inferior court; Peter Patterson, justice inferior court; William W. Kinsey, justice inferior court; and Samuel Jones, justice inferior court.

The said Francis Weeks is *recognized as a soldier* of the revolution, and a competent witness in William Coggin's pension claim.—(See Coggin's brief; allowed $88 as a lieutenant.)

William Coggin's commission was never produced, being *lost or mislaid.*—(See declaration in 1854.)

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT. No. 89.

WILLIAM HUMPHREY—CHILDREN OF.

[To accompany bill H. R. No. 723.]

JANUARY 16, 1857.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to which was referred the petition of the heirs of William Humphrey, a revolutionary soldier, ask leave to report:

That upon a careful examination of the papers referred with the petition, it appears that William Humphrey served full seventeen months.

The declaration of the soldier himself gives a detail of his service in the years 1780 and 1781, under various officers, naming Captain Holt Richardson, and Colonel Dabney, by the latter of whom he was discharged after the surrender of Cornwallis at Yorktown, in October, 1781. And Edward Barker, a revolutionary soldier, testifies to William Humphrey's service in Colonel Dabney's third regiment of Virginia troops at Yorktown. The court also certifies that after propounding the interrogatories prescribed by the War Department, they are of opinion that he served as stated in his declaration. The Rev. James Brumfield, and Alfred H. Atkins, both testify their belief that he was a revolutionary soldier—that he was always so reputed in his neighborhood. Your committee, therefore, report a bill for the relief of the children.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 90.

HANNAH WILCOX—CHILDREN OF.

[To accompany bill H. R. No. 724.]

JANUARY 16, 1857.

Mr. KILLIAN MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the papers and claim of Hannah Wilcox, of the State of New York, for a pension under the law of the 7th July, 1838, *have had the same under consideration, and respectfully report:*

That the petitioner, Hannah Wilcox, formerly the wife of David White, deceased, late a pensioner of the United States, at the rate of ninety-six dollars per annum, and who died in February, 1831, alleged in her declaration that she was married to the said David White on the 25th November, 1790. These facts are first supported by the evidence of Lydia Holmes and Sally Fuller. In further support of her marriage is an ancient family record, showing the date of the birth of her first child, Lucy White, to have been on the 18th September, 1793. This record is shown to have been in use for more than thirty years, by the evidence of Lucy Press, (the first child,) and William Press, her husband, the parties having been married in 1811. All of the above four witnesses are certified to be respectable persons. The testimony of Gad M. Lawrence, Lydia Holmes, William Press, and Lucy Press, together with the testimony of John Stephens, Lucy Hatch, and Abraham Close, all duly certified to be respectable persons, giving circumstances and data for their knowledge of the truth and fact of the marriage as having taken place prior to 1794.

It is further in proof before the surrogate's court, to wit, the evidence of Newel Weard, Polly Aldridge, B. F. Aldridge, and B. P. Hammond, and under the certificate and seal of the surrogate, that the said Hannah Wilcox died a widow on the 11th day of January, 1856, leaving but two children, viz: Lucy Press and Lucinda Hammond, being her only children her surviving, and that each of them are over the age of twenty-one years.

Your committee upon this evidence believe her marriage to have taken place before 1794, it being the only point to be settled, and *they do therefore report a bill* and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 91.

TOUSANT LAVARNWAY—CHILDREN OF.

[To accompany bill H. R. No. 725.]

JANUARY 16, 1857.

Mr. KILLIAN MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the surviving children of Tousant Lavarnway, for arrears of pension due their father for services in the revolutionary war, report:

That from the testimony of two credible witnesses, in addition to the oath of the soldier, it appears that the said Tousant Lavarnway volunteered as a private, and entered in the company commanded by his father, Captain Francis Lavarnway, in Colonel James Livingston's regiment of Canadian refugees, in the continental service, on or about the first day of November, 1775, and served in said company about two weeks, when his father's company was broken up, most of them having been, with his father, taken prisoners with Colonel Ethan Allen, in an engagement at Montreal, and that the said Tousant made his escape at that time; and from that time he was appointed conductor of teams, accompanied the American army to Quebec, and continued in said service as conductor until the retreat of the American army from Canada, when his services in that capacity were no longer needed; that he then turned his attention to securing the crops on his father's farm, and to looking after and protecting his property, while his father was captive; but the approach of the British army compelled him to relinquish the hope of saving it, and the certainty that he would be dealt with if he remained, he soon followed after the American army, and took refuge in the State of New York, where he ever after lived and died. After the pension act of June 7, 1832, he made application to the Pension Office for a pension; but his claim was denied on the ground that "he did not serve as a soldier—he was a wagoner," (see rejected or suspended pensions, page 128.) It seems at this time the Pension Department held team service not within the act of 7th June, 1832, and afterwards they came to the decision to allow for that kind of service, and the applicant in the mean time died, to wit: on the 15th day of March, 1845. Subsequently, in 1851, his children made application to the Pension Office for the arrears of pensions due their father, but from the imperfections

in the form, or some cause, no notice seems to have been taken of said application. Again, on the 7th of February, 1856, the surviving children made a renewed declaration in open court, substantially conforming to the practice and usages of the Pension Department, in which the court express their satisfaction, and grant their certificate, that the said Tousant Lavarnway did serve in the manner as above stated; that he died on the 15th of March, 1845, and left no widow; that the children named were the only surviving children of the said Tousant Lavarnway who survived him, as has been stated.

The answer to this last application will be found in the several letters from the Pension Office to the agent of the claimants, which your committee have examined, and which have been furnished by the agent. And the papers having been sent to your committee from the Pension Office, containing the whole of the evidence, without any remarks from the Commissioner of Pensions, your committee have taken a liberal view of the whole case, and they are satisfied that there is evidence sufficient to authorize your committee to report a bill for the eight and a half months' service—the half month as a private and the residue a teamster or conductor of teams. And they report a bill accordingly.

34TH CONGRESS. } HOUSE OF REPRESENTATIVES. { REPORT,
3d Session. } { No. 92.

JACOB JERO.

[To accompany bill H. R. No. 726.]

JANUARY 16, 1857.

MR. KILLIAN MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT

The Committee on Revolutionary Pensions, to whom was referred the petition of Jacob Jero, only surviving child of Baptiste Jero, praying for the arrears of pension due to his mother, the widow of the said Baptiste Jero, who was a sergeant in the revolutionary war, report:

The petitioner states that his said father, Baptiste Jero, was a sergeant in the regiment commanded by General Hasen, in the continental line of the army of the revolutionary war, for more than two years, and was entitled to a pension under the act of June 7, 1832. That at the time of the passage of said act he was a resident of Canada, and before he could make arrangements, after said act was made known to him, and before he could proceed to the States to obtain its benefit, he died, to wit, on the 20th day of November, 1837, leaving a widow surviving him, to whom he was married July 27, 1795.

That his mother made application for a pension on account of the services of her said husband, under the pension act of July 29, 1848, and proved her right thereto, as he is informed; but the pension department suspended her claim for further proof, and that before she could look about for the positive proof of a living witness of her husband's services she died, to wit, on the 18th day of May, 1854, and the petitioner claims he is justly entitled to the arrears of pension due to his said father and mother, and prays that the proofs on file in the pension office may be produced before Congress that they may grant the pension.

The committee have examined carefully the evidence sent from the pension office and other testimony, and they find the facts as set forth in the petition to be substantially supported, and that from some further evidence submitted in regard to the identity of the soldier and his widow, and their deaths, they are satisfied that the said Baptiste Jero served as a sergeant two years previous to the first day of November, 1782, in the Canadian regiment, commanded by General

Moses Hasen. That such a person served the term aforesaid is shown by a certificate from the secretary of State's office at Albany, New York, which gives an exemplification of an original return made by General Hasen himself, and sworn to by him on the 27th day of January, 1785, and filed in the secretary's office, on which return the said Baptiste Jero was further entitled to certain lands promised to be given as bounty lands. The record of his services being produced, with the most satisfactory evidence as to identity, and the record of the marriage and death being properly certified, your committee are of opinion that the petitioner is entitled to relief, and they report a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 93.

IRA JOHNSON—CHILDREN OF.

[To accompany bill H. R. No. 727.]

JANUARY 16, 1857.

Mr. KILLIAN MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the heirs of Ira Johnson, a revolutionary soldier, having examined into the allegations and proofs of the claimants, report:

That the said Ira Johnson, at the age of sixteen years, volunteered to go with his father, Ira Johnson, to the battle of Lexington, in the revolutionary war, and fought at the side of his father, who was killed, or died of the wounds he received in said action; that he then enlisted and fought in several battles until he was made prisoner and wounded and taken into captivity fourteen months; that on his return from Indian captivity he was appointed a sergeant in the seventh Massachusetts regiment of continental troops. His original warrant of appointment accompanies this report, and bears date the 9th of November, 1777, and is from under the hand of Lieutenant Colonel John Brooks, commandant of said regiment. It further appears that he served in the Indian wars, under General Wayne, in 1794 and 1795, and was the chosen guide to conduct General Wayne to the Indian villages on the Great and Little Miami rivers, in the Ohio country, and after his return was commissioned adjutant by the governor of New York, which commission also accompanies this report. The said Ira Johnson died the 31st March, 1812, and his widow in 1833, before any provisions were made for pensions to the soldier or his widow; but the land bounty act of September 16, 1776, was in force, but it does not appear that they ever applied. They left several children, and but for the word *minor* in the eighth section of the act of March 3, 1855, they would be entitled under the same.

Your committee having reported favorably on the petition of Thomas Giles, a similar case, have concluded to allow this case for the same reasons, and report a bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 94.

ROBERT McNEIL.—HEIRS OF.

[To accompany bill H. R. No. 728.]

JANUARY 16, 1857.

Mr. KNAPP, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of the surviving daughters and only heirs of Robert McNeil, deceased, a captain of marines in the revolutionary war, praying for a pension or recompense for services their father was entitled to, report:

That from well authenticated facts, and the original letters written by Captain McNeil while in prison, it satisfactorily appears that the said Robert McNeil, in the year 1777, was commissioned in the continental service a lieutenant of marines on board the United States frigate Boston, commanded by one Hector McNeil. That on the 7th day of June, 1777, the frigates Boston and Hancock, being in company on a cruise, captured the British frigate Fox, and the said Robert was appointed to the command of the marines on board the said prize. That on the 7th day of July thereafter, after a sharp engagement, the Fox was re-captured by the British frigate Flora and taken into Halifax, where the said Captain McNeil and marines were held prisoners of war until exchanged some six months after. That he served in the capacity aforesaid eight months, including the term of his imprisonment from May 21, 1777, to January 24, 1778. That he suffered much in prison, and returned ruined in health and fortune, and died in Savannah, Georgia, in the year 1792.

And your committee further report that the said Robert McNeil, after said exchange, was not continued in the service; and that by a resolution of Congress of November 24, 1778, and May 22, 1779, he was to be settled with, and considered as a supernumerary officer, and entitled to one year's pay, to be computed from the time such officer had leave of absence on that account; and Congress further recommended the States to which such officers belonged to make such further provision for them as their respective circumstances and means entitled them to. And inasmuch as the said Captain McNeil was never settled with, or received pay for his services, and that there is now due him the sum of $4,178, which his children are legally entitled to, they report a bill for their relief.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 95.

ELIZABETH E. V. FIELD.

[To accompany bill H. R. No. 729.]

JANUARY 16, 1857.

Mr. ANDREW OLIVER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Elizabeth E. V. Field, widow of the late Captain George F. Field, of the third regiment of United States infantry, report:

That they find the facts in this case correctly stated in a report made by the Committee on Invalid Pensions in the House of Representatives, January 30, 1852, and they therefore adopt said report, to wit:

"*The Committee on Invalid Pensions, to whom was referred the petition and papers of Elizabeth E. V. Field, widow of the late Captain George F. Field, of the third regiment of United States infantry, report:*

"That it appears that Captain Field was killed while serving with his regiment, on the 21st September, 1846, at the battle of Monterey, in Mexico, leaving the petitioner his widow, and a son now eight years old, unprovided with any suitable means of subsistence; that under the act of Congress, approved 22d February, 1849, she received a sum equal to his half-pay, (twenty dollars per month,) which enabled her to support herself and son; but this resource has failed since September last, by the expiration of the law. It also appears that her paternal grandfather was a colonel in the revolutionary war, and at its close breveted brigadier general; that her father entered the army in 1812, and remained in it until his death, which occurred at New Orleans, July 15, 1845, a period of thirty-three years. His son, a brother to the petitioner, was a lieutenant in the third infantry, served in Florida, and died on his way home, of disease contracted by exposure. That the said Captain Field graduated at West Point in 1834, was in Florida during the war, and participated in the battles of Palo Alto, Resaca de la Palma, and Monterey, and had but four months leave of absence while he held his commission. Her petition states, that in making this application for a small stipend from the gov-

ernment of her country, she cannot feel that she is soliciting individual charity; she feels that she is but urging an equitable claim for subsistence for herself and child, after having surrendered to that country a husband, father, and brother; and the committee think her appeal ought not to be in vain, and therefore report a bill for her relief."

Your committee also urge the adoption of the accompanying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 96.

ELIZABETH MONROE.

[To accompany bill H. R. No. 730.]

JANUARY 16, 1857.

Mr. ANDREW OLIVER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Elizabeth Monroe, widow of Thomas J. C. Monroe, late assistant surgeon in the army of the United States, hav'ng had the same under consideration, report:

That they find the facts in this case correctly stated in a report made by Mr. Stockton, from the Committee on Pensions in the Senate, January 19, 1852. That report is as follows: "The Committee on Pensions, to whom was referred the memorial of Elizabeth Monroe, report: That the memorialist is the widow of Surgeon Thomas J. C. Monroe, late of the army, who, after a service of twenty-eight years, died from the effects of exposure and arduous duty. Her memorial, asking a pension, was first presented to the Senate the 10th of February, 1848, and a bill for her relief was reported from the Committee on Pensions on the 4th of May in that year. The 24th of January, 1850, the subject was again referred to the committee, and on the 4th of February following they made a favorable report, accompanied by a bill. In that report the committee says: An examination of the facts set forth by the memorialist, and the evidence accompanying the same, has convinced the committee that the memorialist should receive relief. Concurring in this view, the committee recommend the passage of the accompanying bill, granting a pension to Elizabeth Monroe for five years." The five years expired on the first January last. Your committee recommend that the act granting her a pension be revived, and continue from that time for and during her natural life. They therefore recommend for adoption the accompanying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 97.

MARY W. THOMPSON.

[To accompany bill H. R. No. 730.]

JANUARY 16, 1857.

Mr. ANDREW OLIVER, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the papers of Mary W. Thompson, widow of Lieutenant Colonel Alexander R. Thompson, late of the United States army, deceased, report:

That said Mary W. Thompson received a half-pay pension for five years, under a general law granting half-pay pensions to certain "*widows whose husbands had been killed or died of wounds while in the service of the United States,*" to wit, from December 25, 1837, (the date of her husband's death,) until December 25, 1842, when her pension terminated. From this period until January 1, 1852, *she received no pension whatever*. On her application to Congress at this time for a pension for life, the Senate passed a bill for her relief; but during that session it did not get through the House, but remained on the calendar. In 1853 the House took up the Senate's bill for her relief, and passed it, allowing her thereby a pension from January 1, 1852, to continue during her widowhood. While the bill was on its passage in the House an amendment was added thereto, placing the names of the widows of Majors Dade and Lomax upon the bill, giving to these latter widows pensions for life, to commence some twelve years back, or from the date of their husbands' deaths, thus making it an uninterrupted relief to these widows. The design of this bill is merely to place Mrs. Thompson on the same footing with these and other widows whose husbands have been slain in battle, by filling up the period during which she received no pension, and thus give her a continuous pension from her husband's death, and during her widowhood. It will therefore be nothing more than an act of equal justice to pass this bill for the widow of a brave and meritorious officer who sacrificed his life in his country's service.

Your committee annex a copy of the report of the Senate committee made in this case January 19, 1852.

"*The Committee on Pensions, to whom was referred the memorial of Mary W. Thompson, beg leave to report:*

"That the memorialist is the widow of the late Lieutenant Colonel Alexander R. Thompson, who was killed at the head of his regiment on the 25th of December, 1837, in an action with the Indians in Florida, after faithfully serving his country for upwards of twenty-five years. On the death of her husband Mrs. Thompson received a pension, which was continued for five years, under the law of April 16, 1816; and in 1844 she asked of Congress a renewal and continuance of the pension, grounding her claim upon the long and valuable services of her husband, his death in battle, on several precedents, and on valuable services which she had herself rendered during his lifetime. Her memorial was presented to the House of Representatives, and on the 24th of May, 1844, the committee to whom it had been referred made a favorable report thereon, in which they say: 'The memorial does no more than justice to the memory and gallant services of one of the most meritorious of those distinguished officers whose virtues and whose bravery have reflected so much credit upon the American army. During a service of about twenty-six years, Colonel Thompson was distinguished in every grade through which he passed. The committee have been furnished with testimonials in his behalf of the highest commendation, from the most distinguished officers of the army. Colonel Thompson has also been required to perform public services and agencies of a civil character, which were entirely out of the line of his official military duties, involving high responsibilities. To enable him to discharge these satisfactorily to the government, it was necessary for him to have an assistant; this assistance was rendered by the memorialist, by the devotion of much of her time for a series of years, or rather by giving her time to the government, and thereby rendering important services.' 'The case of the petitioner is peculiar; the services of her husband were such as are rarely if ever rendered; and the circumstances of his death, in a war wherein no glory was to be gained—a war of suffering and disease, wherein all was at hazard, and nothing to be gained—must be taken into consideration (in the opinion of the committee) in estimating the compensation to be allowed.'

"In 1848, the memorial was again presented to the House of Representatives, and again a favorable report was made on the 18th of May of that year, in which the committee made, as a part of their own report, that of the 24th of May, 1844. The report of May, 1848, sets forth: 'That Colonel Thompson was a most gallant officer, and extremely useful in the service, as well in the management of his corps in action and in camp, his personal bravery in conflict, and in his instruction of the officers and troops under his command, in preparing them for their duties in the service, while, at the same time, he performed other duties not pertaining to his station, in which he was assisted by his wife, the memorialist, who thus gave her services to the government in the exercise of duties important to the

country, and which did not pertain to her or to her husband. These facts are most fully sustained by a letter of Major General Gaines, and from other evidences which have been presented to your committee.'

"The committee, in view of the facts presented to them, have reported a bill providing a pension for the memorialist during her widowhood."

Your committee therefore recommend for adoption the accompanying bill.

DOES NOT CIRCULATE

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 98.

AMENDMENT OF THE PATENT LAWS.

[To accompany bill H. R. No. 732]

JANUARY 16, 1857.

Mr. PAINE, from the Committee on Patents, made the following

REPORT

The Committee on Patents beg leave to report:

That the purpose of this bill is to regulate and facilitate the business of the Patent Office, by removing some of the most prominent inconveniencies of the present system that experience has shown to exist, and thereby to afford enlarged facilities to all parties to obtain speedy justice.

As the law now is, if two or more litigants are before the Patent Office, no power exists to compel a witness to testify in the case; no evidence can be obtained that is not volunteered. The first section of the bill remedies this defect in the present law, carefully guarding the rights of all parties.

The second section modifies the present system of examination, so as to remedy a defect that has grown out of the necessary increase of the examining corps, (now twenty-four in number,) by the rapid enlargement of the business of the office, which has expanded beyond the capabilities of the original law. This section provides a board of three examiners-in-chief to supervise and regulate the official decisions. They are officers requiring as much talent and learning as any scientific officers under government. The salary affixed to them in the bill is the same as that now paid the principal assistant of the Superintendent of the Coast Survey, and the Commissioner's salary is made the same as the Superintendent of the Coast Survey.

Instead of allowing an appeal to a judge of the district court of the District of Columbia, as under the present law, a final appeal is given to the Commissioner of Patents on payment of two-fifths of the sum now charged on appeals.

The fourth section of the bill removes from the office innumerable useless, unpatented models, found to have no novelty, that now occupy a large portion of the room of the Patent Office, and their accumulation hereafter is prevented. Much waste of time and expense will thus be saved.

The fifth section of the bill abolishes the agencies for the transmission of models at government expense; authority is also given to the Commissioner to authorize a clerk to frank the official documents of the office.

The sixth section is intended to give the commissioner a proper control over the mode of presenting and arguing cases before the office. In the succeeding section, that part of the present law is repealed, which allows an addition to letters patent; it also determines the time of notice to the caveator in a case of interference. The power to withdraw moneys paid in on application for a patent is repealed; and by the modified rates of fees proposed in the eighth section, the first payment made with the application for patent, is reduced or modified, by which the present inconvenient system of receiving into the treasury to be withdrawn is abolished; and much official time and annoyance, as well as trouble to the applicant, will thus be saved. The table of fees here proposed, is more convenient, just and equitable, and no distinction is made in it between the citizen and a foreign applicant. This is in accordance with the repeated recommendation of the Commissioner of Patents, and with the laws of the most enlightened European nations, in which no such distinction is made. In some of the British colonies bordering upon our territory, citizens of the United States are not allowed the protection of letters patent; it has therefore been deemed just and proper to reciprocate until they admit our citizens to the favor of the protection to which they are equitably entitled. The ninth section is for that purpose.

The tenth, eleventh, and twelfth sections provide for the printing of the current patents. This is a matter of great importance, not only to the inventor, but to the whole public. Each patent issued, if valid, has the power of a statute law, and it is a presumption of law that every person has a knowledge of the contents, while in fact patents are now sealed books to the great body of the people. If they are printed and properly distributed to all parts of our extended country, the citizens north, south, east, and west will be equally well informed, and have the same facilities as those of the District of Columbia. With this diffusion of knowledge, the mechanical industry of the country will be improved, and the labor and cost of producing old devices will be saved. The agriculturist, mechanic, and manufacturer will alike be benefited.

An able jurist on the bench of the Supreme Court says: "The people generally should have some more convenient way of getting a knowledge of patent specifications, of which the courts treat them as having *notice*, not only that they may be able to adopt and purchase such inventions and discoveries, but that they may not, as is very often the case, get themselves involved in litigation, or be made the subjects of *black mail levies*, on account of their ignorance of matters which the law presumes them to know, while it furnishes them no means of acquiring that knowledge."

Now, the official records and drawings of patents are daily in the hands of persons connected with the Patent Office for inspection, and subject to injury either by accident or design; this would be avoided if they were printed. The great cost of certified copies often required in patent suits would be saved by placing copies, as proposed by the bill, within the reach of the court. This cost has frequently amounted to three or four hundred dollars; it has sometimes reached a cost of more than one thousand dollars, and in one patent the cost of certified

copies for the trial of the numerous cases under it has been estimated at the enormous sum of ten thousand dollars; this would have all been saved, or nearly so, had there been copies in the various courts. If the several examiners of the Patent Office had copies at their command, of the patents they are required to examine in the course of their official duty, there would be a great saving of time, and the efficiency of the present force would be proportionally increased.

The committee have instructed me to report the accompanying bill, with a recommendation that it do pass.

ROBERT T. PAINE.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 99.

WOODWORTH'S PATENT.

JANUARY 16, 1857.—Laid on the table and ordered to be printed.

Mr. MORGAN, from the Committee on Patents, made the following

REPORT.

The Committee on Patents, to whom was referred the memorial of William W. Woodworth, administrator of William Woodworth, deceased, with various other memorials and remonstrances against the extension of the Woodworth patent, submit the following report:

The committee have given the subject a degree of attention demanded by its importance.

On the 27th December, 1828, a patent was issued by the Commissioner of Patents to William Woodworth for a *planing machine*, which expired in 1842, at which time it was renewed for seven years, extending to 27th December, 1849. On the 26th February, 1845, nearly five years before its expiration, Congress further extended the patent seven years to the 27th December, 1856, and are now asked to extend it still further for fourteen years to the 27th December, 1870.

The committee do not deem it important to state at length the reasons upon which the application is based. It is, in brief, that during the term of the patent the parties in interest have been compelled constantly to defend it at great expense in the courts of many States, and that the patentee and his heirs have not been fairly and fully remunerated for the great benefits conferred upon the country by this invention.

Without going back of the last renewal in 1845, twelve years since, it appears evident that very large sums have been realized from the sale of territory and for the exclusive use of machines. What amount the heirs of William Woodworth, deceased, have received does not satisfactorily appear. But one payment to them of fifty thousand ($50,000) dollars is acknowledged.

It is believed by your committee that many hundreds of thousands of dollars have been realized from this patent over and above any sums paid for its defence or otherwise; and it is certain the public have been taxed to the amount of millions on account of it.

Public sentiment and justice demand there shall be no further extension of this patent, in which your committee unanimously concur, and recommend that the prayer of the memorialist be not granted, and they be discharged from its further consideration.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 100.

KERR, BRIERLY & COMPANY.

JANUARY 16, 1857.—Laid upon the table and ordered to be printed.

Mr. DENVER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Kerr, Brierly & Company, respectfully report:

The committee at the last session had the memorial under consideration, and reported as follows:

That the memorialists allege that they were the owners of a train, consisting of thirty-nine freight-wagons, about two hundred yoke of valuable oxen, one single wagon, horses and mules, goods and merchandise, amounting in value, as they allege, to over forty-one thousand dollars, which was on its way to Salt Lake, about the time that General Harney made battle on the Sioux Indians. On account of this attack on the Sioux, making them very hostile, they allege that they had to proceed along very carefully, and were prevented from affording their cattle an opportunity to range and feed, on which account many of them died on the way, forcing the memorialists to purchase others; and finally they all died, with the exception of thirty head, on account of becoming poor during the winter. For the losses thus incurred the memorialists ask to be reimbursed by Congress. Though no evidence is adduced to verify these statements of the memorialists, the committee think that this omission is immaterial. Admitting the facts to be proven, the committee see no reason why the government should become the insurer of trains engaged in private enterprize against the hazards and losses incident to travel over the country upon which this train was passing, at a time when the Indians were in open war against the United States. The committee ask to be discharged from the further consideration of the memorial.

Such was the report of the committee at the last session. At this session proof is afforded conclusive as to the facts alleged; and, whilst the committee deeply sympathize with the memorialists, they see no reason to depart from the principle laid down in the report above. They, therefore, ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 101.

GEORGE W. SMITH.

JANUARY 16, 1857.—Laid on the table and ordered to be printed.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of George W. Smith, respectfully report:

The memorialist claims a balance of three months' pay and allowances as brigade foragemaster in General Samuel Smith's brigade in the war of 1812. Whilst the committee do not wish to prejudice any claim which the memorialist may have, the absence of any evidence accompanying the memorial constrains them to ask that they be discharged from its further consideration.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 102.

ESTHER WILSON, WIDOW OF REUBEN GARLICK.

JANUARY 16, 1857.—Laid on the table and ordered to be printed.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Esther Wilson, respectfully report:

The memorialist alleges that during the war of 1812 she served, at the solicitation of one Captain John Lytel, or Little, in the capacity of commissary in distributing rations to twenty-seven women and children, and that she took into her family two wounded United States soldiers and nursed and boarded them for over three months, until they were taken away by a person named Chapin, connected with the United States service, who had put them under her charge. For none of these services she alleges has she been paid, and now comes before Congress praying remuneration. In the absence of any evidence other than the memorialist's own statement, the committee ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 103.

JULIA A. MAGAN.

JANUARY 16, 1857.--Laid upon the table and ordered to be printed.

Mr. SAPP, from the Committee on Military Affairs made the following

REPORT.

The Committee on Military Affairs to whom was referred the memorial of Julia A. Magan, respectfully report:

The memorialist claims a pension on the grounds that her husband devoted his whole life to the service of his country as an officer, and that on that account he had no opportunity of amassing wealth, and therefore died and left his wife and family in a destitute condition. There is no evidence accompanying the memorial. This the committee, however, deem immaterial. They can discover no sound principle upon which the pension laws could be extended to embrace the case of the memorialist. They therefore ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 104.

A. W. DESMAKE.

JANUARY 16, 1857.—Laid upon the table and ordered to be printed.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of A. W. Desmake, of Bexar county, Texas, respectfully report:

It appears by the statements of the petitioner, that in the year 1855 he owned a number of horses, mares and colts, which he values at $3,380. He states that all these horses were stolen and carried off by marauding Indians in that year; that he used all efforts to re-capture them but was unable to do so, and has lost them..

The statements in the petition are sworn to by the petitioner; but there is no other testimony in support either of his ownership, or of his loss of any horses, but the claim rests upon his naked statement. The committee, therefore, ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 105.

HORATIO GROOMES.

JANUARY 16, 1857.—Laid on the table and ordered to be printed.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Horatio Groomes, respectfully report:

The memorialist prays a pension for flesh wounds, of no permanent injury, which he thinks, however, in consideration of the gallant service in which he was engaged, should be granted to him. He alleges that during the war of 1812, whilst he was a private in Captain Richard Matson's company, in the regiment commanded by Colonel John Allen, the major of the battalion, afterwards Governor George Madison, of Kentucky, made an appeal to the volunteers for some one of them to make the attempt and set fire to a barn then occupied by a large British and Indian force. The petitioner volunteered his services, and made two efforts, in the last of which he succeeded in setting fire to and destroying the barn. In making his retreat, he received two flesh wounds, and his clothes were completely riddled with balls. This is the statement of the memorialist. No evidence accompanies his petition. The committee, therefore, without expressing an opinion as to the merits of the claim, ask to be discharged from its further consideration.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 106.

R. A. WAINWRIGHT.

JANUARY 16, 1857.—Laid upon the table and ordered to be printed.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Captain R. A. Wainwright, respectfully report:

It appears, from the evidence, that the memorialist was in command of the United States arsenal at Watertown, Massachusetts; that on the first day of October, 1855, the petitioner drew from the sub-treasury at Boston, for the use of the arsenal, the sum of $1,765, which he placed in a carpet-bag, and put under the seat of the covered wagon in use at the arsenal; that being obliged to make a number of visits at different places in Boston, transacting the business appertaining to his duties, he was obliged to leave the money in the wagon, but called the special attention of the driver (one of his own) to the bag containing it, to insure its safety. Captain Wainwright and S. A. Wainwright, who was in company with him, left Burke in charge, directing him to attend to some duties, and to meet him at the Wintrop House. He (the driver Burke) performed his duties, and met Captain Wainwright, according to direction, at the Winthrop House, but when he got there the money was missing and gone. How, and by what means it was lost, neither the driver nor the petitioner could account.

It appears that the driver had been many years employed by the predecessor of Captain Wainwright in many important and trusty duties, and bore the reputation of an honest and worthy man, and had been often intrusted to draw money from the sub-treasury in considerable sums, as well as deposite checks.

It appears by the deposition of the driver, Burke, he never left the wagon but once, and this was for about three minutes, when he went into an apothecary's shop for some medicine for the use of the arsenal, and by direction of Captain Wainwright.

The committee are of opinion that due diligence was not observed in this case by Captain Wainwright. They, therefore, ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 107.

AMENDMENT TO ACT OF MARCH 3, 1855, GRANTING BOUNTY LAND.

JANUARY 16, 1857.—Laid upon the table and ordered to be printed.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of certain citizens of Ohio praying an amendment of the bounty land act of March 3, 1855, *respectfully report:*

The memorialists allege that they are a class of soldiers in the war of 1812 who served from nine to twelve days, and who, by reason of the provisions of the act making the minimum service fourteen days to entitle a soldier to bounty land, are precluded from the benefits of said act. They desire that Congress shall pass an act giving to every man who served, no matter how long, 160 acres of land. The committee feel constrained to report against any additional legislation on the subject. They, therefore, ask to be discharged from the further consideration of the memorial.

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34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 108.

JAMES E. STEWART.

JANUARY 16, 1857.—Laid upon the table and ordered to be printed.

Mr. B. CLARKE, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of James E. Stewart, respectfully report:

The committee find their views so admirably set forth in a report made by Mr. Faulkner, from the Military Committee during the second session of the thirty-third Congress, that they append the same as a part of this their report, and ask to be discharged from the further consideration of the memorial.

IN THE HOUSE OF REPRESENTATIVES, DECEMBER 22, 1854.

Mr. FAULKNER, from the Committee on Military Affairs, made the following report:

The Committee on Military Affairs, to whom was referred the memorial of James E. Stewart, late a captain in the battalion of Maryland and District of Columbia volunteers, in the war with Mexico, have accordingly had the same under consideration, and submit the following report:

It appears, from the evidence, that the memorialist entered the service as captain of company A, in said battalion, on the 30th of May, 1846, at the city of Washington, for the period of twelve months; that upon the death of Lieutenant Colonel Watson, who was killed in the action at Monterey on the 21st of September, 1846, the memorialist, by virtue of his position as senior officer, became the officer in command of the battalion, and so continued until the 24th November, 1846, when Major R. A. Buchanan, United States army, assumed the command by regular appointment.

The memorialist claims the difference between the pay of captain and the pay and emoluments of a lieutenant colonel, from the 21st of September, 1846, the date of the death of Lieutenant Colonel Watson,

and the 30th of May, 1847, when the battalion was mustered out of service.

How the memorialist can claim pay as a lieutenant colonel for a time when Major Buchanan was regularly in discharge of the duties of the command, the committee cannot conceive.

If the memorialist is entitled to any additional allowance whatever, it would only be for the time between the death of Lieutenant Colonel Watson, on the 21st of September, 1846, and the appointment of Major Buchanan, on the 24th of November, 1846—a period of about two months. The committee are not willing, however, to admit his claim even to that extent, for the reason that they are of opinion that the mere temporary imposition of an additional honor or responsibility upon an officer can give him no claim to extra compensation. The pay is graduated according to the rank of the officer.

There was scarcely a regiment in Mexico which was not at one time under the command of a captain, and yet those officers have never set up any claim to compensation beyond their rank. To allow, then, this demand, would be opening the door to an endless batch of claims of the same character, and for the performance temporarily of duties which are coveted as the means of honorable distinction, but have never heretofore been regarded as conferring any additional claim to pay.

For these reasons, the committee ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 109.

TERRY RUNNELLS.

JANUARY 16, 1857.—Laid upon the table and ordered to be printed.

Mr. B. CLARKE, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Terry Runnells, of the State of Georgia, respectfully report:

The memorialist claims from the government of the United States eleven thousand and forty-nine dollars and eighty cents, for the services of himself and a company of which he was captain, which he alleges was mustered into the service of the United States at Hartford, Georgia, on the 12th of February, 1818, and served a three months' tour under General Jackson in the Seminole war. Without intending to prejudice the claim of Captain Runnells and company, the committee feel constrained, in the absence of anything in the shape of testimony other than his own individual statement, to ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 110.

HEIRS OF PHILIP LIGHTFOOT.

[To accompany bill H. R. No. 733.]

JANUARY 17, 1857.—Ordered to be printed.

Mr. GARNETT, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Philip Lightfoot, have had the same under consideration, and report:

They find that an able and elaborate report was made upon this case at the second session of the twenty-fifth Congress. Your committee have again investigated the case, and see no reason to depart from the said former report, and therefore make it a part of this report.

Mr. TALIAFERRO, from the Committee on Revolutionary Claims, made the following report:

The Committee on Revolutionary Claims, to whom the petition of Philip Lightfoot was referred, report:

That the petitioner claims, as only son and sole heir-at-law of Philip Lightfoot, deceased, the commutation pay due to his said father for his services as a lieutenant in the Virginia line on continental establishment in the army of the revolution. Diligent inquiry has been made at all the departments here and at Richmond, and no record evidence has been found to show that Philip Lightfoot was an officer. It does appear, that on the 11th of July, 1835, Governor Tazewell allowed land bounty to Philip Lightfoot, as a lieutenant in the continental line, for three years' service. (See the certificate of the register of the land office at Richmond, Virginia.) This allowance was made by Governor Tazewell, on the evidence of two highly respectable and intelligent officers in the continental regiment of artillery commanded by Colonel Charles Harrison, to wit: Judge Francis T. Brooke, and the late Colonel Edmund Brooke—both in service to the end of the war, and *both have received* commutation pay and land bounty from *the United States.* By the testimony of these officers, it is proven

that Philip Lightfoot, father of the petitioner, was a lieutenant in Harrison's regiment of artillery on continental establishment; that he served in the campaign of 1781, in the army commanded by Gen. Lafayette; that he was in actual service in July, 1781, and at the siege of York; that in the summer of 1781, about July, nearly all the regular soldiers attached to the portions of Harrison's regiment then in Virginia were marched to the south, to join the army under Gen. Greene; that nearly all the junior officers in Harrison's regiment were, by the foregoing detachment of the men, left in Virginia without regular command; that, to supply this, militia draughts and recruits were placed under their command, to aid in repelling the then invasion of Virginia; that after the siege of York these militia draughts and recruits were discharged, and the officers were again without men to command, and so remained to the end of the war. Judge Brooke says he knew Philip Lightfoot well; that he was wealthy, and did not regard pay; that he never heard of his resignation; that he considered him in the condition of five-sixths of the officers of that regiment—at home, having no troops to command, virtually in service, though not actually in the field. (For the foregoing statement of the evidence in this case, see the affidavits of Francis T. Brooke and Edmund Brooke, and a certificate of John Taliaferro.) In acting on these cases, the committee receive with great caution parol evidence, to show that the claimant was an officer in the continental service, and, as such, entitled to commutation pay. In all cases, record evidence, when attainable, is required to show—first, that the claimant was an officer; secondly, that his service was such as to entitle him to the pay claimed. There is no rule, however, so general in its application, as not to require necessary exceptions, in order to do justice; and it has generally been the practice to admit secondary evidence, when the best evidence is not in the possession of, or attainable by, the party claiming. As to the present case, there are circumstances arising out of the history of the then and past times, sufficient to create a strong presumption that the records as to Harrison's regiment, from the time Lightfoot joined it to the close of the war, never were very perfect, owing to the reduced and scattered condition of its officers during that period; and that, imperfect as those records were, nearly all of them have been destroyed and lost. It is under these circumstances the petitioner offers secondary evidence to show that he was a lieutenant in Charles Harrison's regiment of artillery, and the evidence offered is that of the two officers of the same regiment above referred to. The committee being satisfied by the evidence in the case, that Philip Lightfoot was a lieutenant in the continental regiment of artillery commanded by Charles Harrison; that he was, as such, in actual service in the campaign in Virginia to its close in 1781; and that subsequent to that time he became supernumerary to the close of the war, are of opinion that he was entitled to commutation pay, and report a bill.

Your committee also find that the late General William Madison, of Virginia, was also a lieutenant in the same artillery regiment with Lieutenant Lightfoot, and that their services and claims are precisely the same. This committee reported in favor of commutation and in-

troduced a bill in favor of General Madison. (See Revolutionary Claims, March 26, 1838, page 445.) Your committee would also refer to the *appendix* to House Report No. 436, 1st session 26th Congress; (Reps. Com. vol. 2,) April 24, 1840, page 131, (No. 24 and No. 4,) which reads as follows: "The regiment of artillery was to be augmented to ten companies, thus making room for the officers as at first constituted; or possibly it required new officers for the new company, which gave occasion for the appointment of Lieutenants Edward Brooke, *Philip Lightfoot*, and William Madison, in 1780."

Your committee report a bill, and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 111.

JOHN B. ROSE.

[To accompany bill H. R. No. 706.]

JANUARY 17, 1857.—Ordered to be printed.

Mr. THORINGTON, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom House bill No. 706, for the relief of John B. Rose, of Wabash county, Indiana, was referred, make the following report:

The following are the facts on which this application is made: General Rose entered the regular army as ensign, October 7, 1812, after the recent declaration of war by the United States against Great Britain. In May, 1813, he was promoted to a second lieutenancy in the 15th regiment of United States infantry.

In the following year, after nearly two years of service on the northern lines, and in the midst of the honorable events of Lake Champlain, in which his regiment participated, Lieutenant Rose became unhappily complicated with Lieutenant Roberts of the same regiment. A duel ensued between them, and in consequence of it, by general orders of General Armstrong, Secretary of War, the names of both were, on the 14th August, 1814, "stricken from the rolls for fighting a duel."

Lieutenant Rose's discharge, it will be noticed, was by general orders. It thus excluded a personal hearing, which would have been permitted on the intervention of a military court.

Application was at once made by him to the Secretary of War to be reinstated. His early preferment from the ranks to the condition of a commissioned officer, and, at the very time of his discharge, the honorable testimony of his companions in service of his character and conduct as a soldier, as shown in their letter to him on the occasion, which the committee has subjoined to this report, and in which the act of private combat, for which he was removed, is spoken of as "not attaching the least blame to his character as an officer or gentleman, but enhancing both," are regarded as evincing his honorable estimation among his associates in arms.

The speedy suspension of hostilities in the north, followed by a speedy proclamation of peace, and the melting of the active army

down to a peace establishment, removed the prominent reason for pressing the application. No decision has ever been made on it.

General Rose appplied in the autumn of 1852, through Hon. Samuel W. Parker, to the Hon. J. E. Heath, then Commissioner of Pensions, for the issuing of a land warrant under the act of September 28, 1850. The benefits of this statute, by its letter, were limited to those, only, who had been honorably discharged. At this time, record evidence, alone, was permitted to establish the qualifications of the service; and the application of General Rose was refused, because the record of his discharge did not seem to bring him within the letter of the law. The letter of Commissioner Heath is appended to this report.

An appeal was taken from this decision to the Secretary of the Interior, the official superior of the Commissioner of Pensions. Notwithstanding his favorable inclination to the application, a reference was made by him to the Secretary of War, to determine if this discharge was within the meaning of the act of 28th September, 1850. The decision was adverse to the application. The letters of the departments are appended to this report.

The committee concur in the decisions made, respectively, by the Commissioner of Pensions and the Secretary of the Interior, but only on the letter of the law, and not from its spirit and principle. The spirit of the law is to reward those who have served the country in the field. The letter of it determines the quality of the service by official regulation.

But the offence of Lieutenant Rose, in fighting a duel, is, in the language of the Secretary of War, purely technical. Except in violating a military rule, it was not a military offence. A private combat has no moral turpitude or degradation in it; it makes no spot in a soldier's honor. It has no kindred to the infirmities of desertion and cowardice, but tries, at private risk, the same generous qualities that makes the soldier a hero in battle. In this case, if it had not been forbidden by a recent order of the Department of War, it would have gone unnoticed, and imported no unsoldierly quality.

It is understood to be in the view, that Rose's services were meritorious, notwithstanding this instance of transgressing discipline, and in the spirit, if not in the letter of this law, left him standing on a footing of common merit with other officers of the war, that the Secretary of the Interior makes use of the following language:

"The claim, therefore, was rejected upon pure technical grounds alone, which were deemed imperative under the provision of the act of 1850; although, upon its intrinsic merits, it was my opinion, and still is, that the claim is a meritorious one, which, although there is no authority in this department to allow under existing laws, is a just and proper one for the beneficent interposition of Congress."

Taking into consideration, then, his volunteer enlistment in the service, his prompt preferment, (which implies merit,) the duration and field of service, the commendation of his official comrades, his discharge from the service by general orders, the pending application for restoration to his rank during the war, and the objection (technical purely)

for excluding him from the benefits of the act of 1850, the committee cannot but think his services were meritorious, and his discharge not dishonorable.

The committee, therefore, report back the bill, with a recommendation that it be passed.

Letter from officers of the 14th, 15th, and 16th regiments United States infantry to Lieutenant John B. Rose.

CAMP, NORTHFIELD, NEAR CHAMPLAIN,
August 20, 1814.

Mr. JOHN B. ROSE: It was with peculiar and lively regret we noticed a general order, a few days since, whereby the 15th regiment is deprived of an useful and valuable officer. You have the consolation to know that it was for an act which cannot attach the least blame to your character as an officer or a gentleman, but enhances both.

It affords the undersigned officers pleasure in testifying to your good conduct as an officer and a gentleman. Sincerely regretting the necessity of your leaving us, our best wishes for your health and prosperity accompany you, and, we flatter ourselves, you will be shortly returned to your former rank in the 15th regiment United States infantry.

Respectfully, yours,

J. D. HAYDEN, *Capt. 15th infantry.*
JOSEPH SCOFIELD, *Lieut. 15th infantry.*
S. McDOUGALL, *Lieut. 15th infantry.*
R. T. BAKER, *Surgeon's mate 15th infantry.*
SAMUEL GILLILAND, *Surgeon 16th infantry.*
HENRY GRUNDAGE, *Major 15th infantry.*
ZACH'A ROSSEL, *Major 15th infantry.*
A. GODWIN, *Lieut. 15th infantry.*
J. DICKINSON, *Lieut. 15th infantry.*
J. WHISLER, *Lieut. and Adj't 16th infantry.*
WM. COFFEE, *Lieut. and q'rm'r 15th infantry.*
SAMUEL RIDDLE, *Lieut. 15th infantry.*
H. M. MEAD, *Lieut. 15th infantry.*
JOHN D. AITKINS, *Capt. 16th infantry.*
M. GREENWOOD, *Capt. 16th infantry.*
THOMAS EVANS, *Lieut. 16th infantry.*
M. THOMAS, JR., *Lieut. 16th infantry.*
J. McELROY, *Capt. 16th infantry.*
CHARLES FOSTER, *Lieut. 16th infantry.*
T. McMAHAN, *Lieut. 16th infantry.*
JOHN D. COON, *Capt. 16th infantry.*
HENRY H. VAN DALUM, *Capt. 16th infantry.*
CROMWELL PEARCE, Col. 16th infantry.
ROBERT GRAY, *Major* 16th infantry.
JOSEPH L. BARTON, Capt. 15th infantry.

GEORGE BRYAN, *Lieut.* 16*th infantry.*
HECTOR BURNS, *Lieut.* 16*th infantry.*
NO. YOUNG, *Lieut.* 16*th infantry.*
THOMAS FINLEY, *Lieut.* 16*th infantry.*
HENRY MASTON, *Lieut* 16*th infantry.*
ZAC. S. CONGER, *Lieut.* 15*th infantry.*
DANIEL E. BURCH,
Lieut. and paymaster 15*th infantry.*
THOMAS N. POWERS,
Lieut. and paymaster 16*th infantry.*
GEORGE G. STEEL, *Capt.* 16*th infantry.*
GEORGE McGLOSSIN, *Capt.* 15*th infantry.*
JOSEPH MARSHALL, *Capt.* 14*th infantry.*
E. L. WHITLOCK,
Lieut. Col. 14*th regiment U. S. infantry.*

Letter of the Commissioner of Pensions to Hon. Samuel W. Parker.

PENSION OFFICE, *January* 13, 1853.

SIR: I should have answered sooner your letter of the 6th instant, but deemed it advisable, first, to ascertain at the War Department what proceedings had been had in the case of Lieutenant, now General Rose. From your representations, I felt anxious to arrive at a favorable result, and if I had any discretion in the matter, I should not hesitate a moment to allow the claim.

The clerk who made the examination at the department reports to me, after careful examination, that all he can find is that Lieutenant Rose was stricken from the rolls for fighting a duel. He does not find any mention of the fact that the Secretary of War recommended his reinstatement. If that was the fact, and he was accordingly reinstated, it would at once settle the question. The promise of land bounty seems always to be coupled with the condition of an honorable discharge, and although, in strictness, there was nothing dishonorable in the dismissal from the service for the cause alleged, yet still it was an act of disobedience, which is considered a high military offence.

I sincerely regret that the rules which govern the office in the allowance of land bounty forbid the admission of the claim. It is possible, however, that the Secretary of the Interior, my official superior, may take a different view of the subject, should you think proper to consult him.

It gives me pleasure to forward you the commission of Mr. Rose, which I have found among the papers.

I have the honor to be, very respectfully, your obedient servant,

J. E. HEATH, *Commissioner.*

Hon. S. W. PARKER,
House of Representatives.

Letter from the Secretary of the Interior to Hon. John U. Pettit.

DEPARTMENT OF THE INTERIOR,
Washington, April 10, 1856.

SIR: I have the honor to transmit herewith the copy of a communication from the Secretary of War, expressing his opinion upon the effect of the discharge of General John B. Rose from the army of the United States, while second lieutenant of the 15th regiment of infantry during the last war with Great Britain, for fighting a duel, so far as such discharge affects his claim for bounty land under the act of September 28, 1850.

The military department of the government having therein decided that his dismissal under the circumstances must be technically held to be a "dishonorable discharge," I am constrained, notwithstanding the previous bias of my mind in favor of admitting the claim, to confirm the original decision of the Pension Bureau rejecting it.

I am, with much respect, your obedient servant,

R. McCLELLAND.

Hon. J. U. PETTIT,
House of Representatives.

Letter from the Secretary of War to the Secretary of the Interior.

WAR DEPARTMENT,
Washington, April 7, 1856.

SIR: I have received and considered your letters of January 18 and March 20, asking the views of this department as to the effect of the entry on the rolls of the 15th regiment of infantry, during the late war with Great Britain, representing second lieutenant John B. Rose as having been "stricken from the rolls of the army." The question before you is, whether such a separation from the army is an honorable or a dishonorable discharge within the meaning of the bounty land act of September 28, 1850.

This mode of severing an officer's connexion with the army is adopted only when, in the opinion of the proper authority, his longer retention in the service is palpably improper. The act being done by competent authority, its legal effect is independent of the grounds on which it proceeded. In the present case, however, it appears that the dismissal was in consequence of having fought a duel in violation of a general order, published to the army a few weeks before the act; and it is obvious that the highest considerations of public interest may require the suppression of private combats between officers of the army in the face of an enemy. The judgment of the proper authority was pronounced in the orders issued on the occasion, and the dismissal must be technically held to have been a "dishonorable discharge."

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

Hon. R. McCLELLAND,
Secretary of the Interior.

Letter of the Secretary of the Interior to the Hon. John U. Pettit.

DEPARTMENT OF THE INTERIOR,
Washington, July 22, 1856.

SIR: I have the honor to acknowledge the receipt, this day, of your letter of the 21st instant, requesting the facts in the case of the application of General John B. Rose, of Indiana, for bounty land, under the act of September 28, 1850.

In reply, I have to state that the claim was pending upon an appeal from the decision of the Commissioner of Pensions to this department at the time it came under my charge, and my attention being called to it, the claim appeared to me, upon examination, to be a meritorious one. The rejection of its allowance by the Pension Bureau rested entirely upon the technical effect of the entry upon the rolls, to wit: "stricken from the rolls of the army." The effect of this entry, in connexion with the provision of the act of 1850, which requires that the soldier should have received an honorable discharge, being a military question, was referred to the Secretary of War for his opinion. In reply to which was: "The judgment of the proper authority was pronounced in the orders issued on the occasion, and the dismissal must be technically held to have been 'a dishonorable discharge.'" Upon this opinion of the highest military authority upon the entry upon the rolls, this department, in the strict execution of the act, was constrained to affirm the decision of the Pension Bureau.

The claim, therefore, was rejected upon pure technical grounds alone, which were deemed imperative under the provision of the act of 1850, although, upon its intrinsic merits, it was my opinion, and still is, that the claim is a meritorious one, which, although there is no authority in this department to allow under existing laws, is a just and proper one for the beneficent interposition of Congress.

I have preferred addressing this communication to you personally, instead of the Hon. Mr. Bennett, for the reason that the inquiry, which is the subject of your letter, has not been made by him in his capacity as Chairman of the Committee on Public Lands, in which capacity you requested that he should be addressed in the matter, and the present communication being an official one, will equally answer the object of your request.

I am, sir, with much respect, your obedient servant,

R. McCLELLAND, *Secretary.*

Hon. JOHN U. PETTIT,
House of Representatives.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 112.

ADAM D. GARDNER.

[To accompany bill H. R. No. 736.]

JANUARY 17, 1857.—Ordered to be printed.

Mr. ROBBINS, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and papers of Adam D. Gardner, of New Hampshire, for an invalid pension, report:

That it appears the petitioner, Adam D. Gardner, entered the service of the United States as private in Captain Moses Hoyt's company, 9th regiment of infantry, commanded by Colonel Tuttle, and served in the same until the battle of Bridgewater, New York, when he received a severe wound in the right thigh from a musket-ball in the said battle with the English. The said wound disabled him from doing military duty as a soldier, but put upon light duty; and continued in the service until he was discharged, at the expiration of his enlistment, in 1815. It further appears, that when the petitioner left the service he was lame, from the effects of the wound he received while in the service and in the line of his duty, and has continued to suffer up to the present time, and, finally, it has totally disabled him from obtaining his support by manual labor.

The statement of the petitioner is supported by the certificates of two physicians and a surgeon, who testify, after making the examination, to his disability, and are of the opinion that his disabled condition is from the effect of wounds and injuries received while in the service of his country and in the line of his duty.

The statement of the petitioner is further supported by the affidavits of three respectable persons, who entirely concur in the facts set forth by the petitioner as to his wounds, injuries, and to his total disability. Your committee, in view of the evidence, and upon full examination of the same, are of the opinion the case is meritorious, and report a bill in accordance with the prayer of the petitioner.

DOES NOT CIRCULATE

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 113.

JAMES WORDEN.

]To accompany bill H. R. No. 737.]

JANUARY 17, 1857.—Ordered to be printed.

Mr. DICKSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of James Worden, having had the same under consideration, beg leave to report:

It appears from the evidence before the committee, that the petitioner entered the service of the United States as seaman, at the city of Boston, on the 17th day of December, 1838, and was soon thereafter drafted to the United States frigate Constitution, under Commodore Claxton, and served in the same vessel during her cruise in the years 1838–'41, and was honorably discharged at Norfolk, Virginia, on or about the first of November, 1841. From the certificate of Dr. Charles D. Maxwell, surgeon of the United States navy, it appears that James Worden was admitted on the medical journal March 23, 1840, nearly one year after the departure of the ship Constitution from the United States, with catarrh; and subsequently, and at different periods of the cruise, was admitted on the medical journal for rheumatism and neuralgia, his attacks having been long, tedious and severe, which resulted in paralysis of the left side, from which he has never recovered.

The committee have no doubt that the disabled condition of the petitioner is from exposure and diseases contracted while in the service, and in the line of his duty; therefore, report a bill for his relief.

DOES NOT CIRCULATE

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 114.

JAMES SWEET.

JANUARY 17, 1857.—Ordered to be printed.

Mr. SAPP, from the Committee on Military Affairs, submitted the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of James Sweet, respectfully report:

In this case the memorialist asks payment for a horse lost in the service of the United States in the war of 1812.

It appears from the petition of James Sweet himself, that on the 27th of August, 1813, he volunteered at Fleming county, Kentucky, and served as a private in Captain G. W. Botts' company of mounted volunteers; that while in the service at Put-in bay, on Lake Erie, there being no forage provided for the horses of the company, they were, by order of Governor Shelby, in command, turned out to graze; that while so grazing, from some cause not stated, the horses became frightened and ran off, by which means the horse of petitioner was so injured that he died; that the horse was worth $75.

The father of petitioner, and who was a private in another company at the time, alone corroborates this statement by deposition.

The committee deem the evidence insufficient, and ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT, No. 115.

PUBLIC BUILDING—ST. PAUL.

JANUARY 20, 1857.

Mr. E. B. WASHBURNE, from the Committee on Commerce, made the following

REPORT.

The Committee on Commerce, to whom was referred a bill making an appropriation by Congress for the purpose of constructing a public building at St. Paul, Minnesota Territory, for a custom-house, post office, &c., submit the following report:

That they have had the subject under consideration, and report a bill herewith, in accordance with the recommendation of the Secretary of the Treasury, contained in a letter to the Hon. Henry Dodge, chairman of the Committee on Commerce in the Senate, which is made a part of this report.

St. Paul is the present capital of the Territory of Minnesota, and has at the present time a population of some ten thousand souls, and is rapidly increasing. It is the most important point on the Mississippi river, above Galena, and is the centre of a large and increasing business. It is in the Minnesota collection district, and has a collector, and must become the point where large amounts of duties will be collected for the government. The United States courts sit at St. Paul, and a suitable court-room is much needed, there being now no proper place for holding the courts. The post office there is a very important one as an assorting office. It is at that point that immense amounts of mail-matter have to be assorted before being sent to other parts of the Territory.

But the most urgent necessity for a government building at St. Paul at the present time is for the purposes of a public depository. But a small proportion of the public lands of that region have as yet been sold, and the government has now no safe or proper place to deposit the immense amounts of money to be derived from the sales of those lands. There are now in the Territory of Minnesota no less than eight land offices, and the moneys received at those offices would be deposited at St. Paul in the event of a safe depository being erected there, which would be a great annual saving to the government, the distances from the offices being so much nearer St. Paul than to the places *where deposits are now* made.

A public building will also be likely to be very soon wanted at St. Paul for another purpose. The public interest would seem to require that the surveyor general's office, now located at Dubuque, in the State of Iowa, should be removed to that place; the public lands in Iowa having been all surveyed, while in Minnesota there are immense amounts yet unsurveyed. Should that be done, the government should have accommodations for the office in its own fire-proof building for the preservation of the surveys, plats, &c. The committee, therefore, recommend the passage of the accompanying bill.

TREASURY DEPARTMENT, *December* 20, 1856.

SIR: I have the honor to acknowledge the receipt of your communication of the 17th instant, transmitting a resolution of the Committee on Commerce, relative to an "appropriation for the construction of a building at the city of St. Paul, in the Territory of Minnesota, for a custom-house, post office, and court-house," and asking for such suggestions upon the subject as I may think proper and conducive to the public interest.

In reply, I have to say that, in consequence of its great importance as a public depository, I should recommend the erection of a fire-proof building of stone, for a public depository, custom-house, post office, court-rooms, and other United States offices, 60 feet by 90 feet, and 56 feet high from the top of the under-pinning to the eaves, having wrought-iron girders, beams, shutters, stairways, roof, &c., for which there would be required an appropriation of one hundred thousand dollars, and ten per cent. additional for contingencies, exclusive of the cost of site.

I have the honor to be, very respectfully, your obedient servant,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. HENRY DODGE,
Chairman Committee on Commerce,
Senate United States.

I hereby certify that the foregoing letter is a true copy of the original now on file with the Committee on Commerce.

H. A. HAYDN,
Clerk of Committee.

JANUARY 12, 1857.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 116.

CARSON VALLEY, UTAH—ANNEXATION TO STATE OF CALIFORNIA—AND EASTERN BOUNDARY OF CALIFORNIA.

JANUARY 20, 1857.—Ordered to be printed.

Mr. MORRILL, from the Committee on Territories, made the following

REPORT.

The Committee on Territories, to whom were referred the petitions of the citizens of Carson Valley, Utah Territory, praying for the annexation of that portion of Utah Territory to the State of California, together with the bill to change the eastern boundary of the State of California, have had the same under consideration, and report as follows, viz:

That it appears the petitioners are situated eight hundred miles from Salt Lake city; that their business and commercial relations are entirely with the State of California; and that they are not Mormons, and do not wish to be. They represent that the territorial laws are not administered with justice, but that those who are not Mormons, and not "zealously affected" towards that faith, are subjected to gross persecutions, by which they are often impoverished, and that the will and fanaticism of the leading elders bear heavily upon the "Gentile minority" in the Territory of Utah. The petition of the ladies represents that while there are but three or four Mormon families in the Carson Valley, yet Elder Orson Hyde is made the probate judge of their county, and that he brings among them "one of his spiritual wives," whom they regard as no better than the "scarlet lady," expecting, when the judge introduces her as his wife, that they will associate with her; but that they look with disgust upon the prospect of raising up their daughters among such associates, and they ardently desire that their homes in their pleasant valley shall not be "defiled" by the "horrible fanaticism" and "deception" of Mormonism.

To what extent the evils complained of by the petitioners of Carson Valley exist, the committee have little accurate information; but it is notorious that similar grievances have been published as prevalent in other portions of Utah; and if they exist in Carson Valley, which is scarcely to be doubted, it may fairly be presumed that their force and offensiveness is not diminished where the sway of the Mormon elders is supported by an overwhelming majority, and where the ecclesias

tical leaders have the unlimited control over the political, civil, and religious action of their devotees.

To grant the prayer of the petitioners, or, in other words, to pass the bill "to change the eastern boundary of the State of California, would only extirpate a small portion of the evil complained of. It appears to your committee that some measure of wider scope is necessary to effect a radical cure of the moral and political pestilence which makes Utah the scandal of the American people. Such a measure is now on the calendar—the bill for "the prevention and punishment of polygamy"—and there is no legislation more earnestly demanded.

Furthermore, the State of California is already too large, and should not, in the opinion of the committee, be made still more unwieldy by a further extension of its boundaries. We therefore report the bill to the House with the recommendation *that it do not pass.*

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 117.

ARIZONA—ORGANIZATION OF TERRITORY OF.

[To accompany bill H. R. No. 752.]

JANUARY 20, 1857.—Ordered to be printed.

Mr. MORRILL, from the Committee on Territories, made the following

REPORT.

The Committee on Territories, to whom was referred the "memorial of the people of the southwestern part of the Territory of New Mexico, praying for the organization of a new Territory," and also of "the proceedings of the convention of the people of the southwestern part of the Territory of New Mexico to organize a separate Territory," have had the same under consideration, and report as follows, to wit:

The remoteness of the western portion of the Territory from the capital and the more populous eastern portion of the Territory, and its increased extent consequent upon the annexation of what is commonly called the *Gadsden Purchase,* in A. D. 1853, seems to have left the inhabitants without much care of the local government, and still less of the general government. The few lines which compose the brief act of Congress *approved August* 4, 1854, "declaring the southern boundary of New Mexico," by which the then recently acquired territory was incorporated with the Territory of New Mexico, appears to be the first and last notice the people there have received since their allegiance has been changed from Mexico to the United States.

It appears from the papers as above referred to, and from other evidence submitted to the committee, that the people of the western portion of New Nexico complain—

First. That they have not been permitted to exercise the right of freemen under the laws and Constitution of the United States.

Second. That they have had no courts, laws, or magistrates.

Third. That they are isolated, cut off, and among savage tribes, with no legal organization, and without any of the privileges of citizenship.

Fourth. That though nominally in the county of Doña Ana, in the Territory of New Mexico, they have never had the benefit of laws or civil officers, nor have they any protection for life, liberty, or property.

Fifth. That the vast extent of the present Territory of New Mexico, and the great natural basins between the eastern and western portions of the *same, will forever* present adverse interests, and prevent the *harmonious action of either* a territorial or State government.

They also pray that measures shall be taken for the speedy settlement of land titles, for the survey of the public lands, for the protection of mining interests, for the establishment of a post route, and the subjugation of the hostile tribes of Indians which infest the country; and they also pray that Congress will admit Mr. N. P. Cook, of Arizona, the delegate elect, to a seat in the House of Representatives, to all the privileges of delegates from other Territories.

This long list of grievances, as set forth by the people of that portion of New Mexico called Arizona, and which there is no reason to doubt are for the major part real grievances, certainly requires an early remedy. Whether a new Territory should be established, or whether other legislative action calculated to remove the chief causes of complaint should be resorted to, was the first point to be determined in the discussion by the committee.

From the statements given to the committee by the most competent available witnesses, there appears no reliable data upon which to found an accurate estimate of the present numbers of the white population in that portion of the Territory which seeks a separate organization. The highest supposition is, that it reaches from *eight to ten thousand*, and the lowest is from *two to three thousand*. A medium between these suppositions would fix the present number at from *five to seven thousand* of white inhabitants. This number is deemed too small by the committee, unless for the gravest reasons, to warrant the large expenditure which a new territorial government would require, especially when it is believed the chief advantages sought may be had in a more economical way.

It is to be presumed that the eastern portion of New Mexico will be prepared at no distant day for admission into the Union as a State. When the Territory is divided for that purpose, as it unquestionably will be, *then* would seem to be the proper time for the establishment of a new territorial government. Such a delay, if the remedies proposed by the committee shall be adopted, will subject the memorialists to very slight remaining inconveniences, and these, in the natural order of events, can remain but for a brief time only.

The committee have, therefore, arrived at the conclusion that a bill to establish a separate judicial district south of the Gila, and to create the office of surveyor general therein, to provide for the adjudication of certain land claims, to grant donations to actual settlers, to survey certain lands, and to provide for the representation of the inhabitants of "the Gadsden Purchase" in the territorial legislature of New Mexico, would be all the legislative redress, with mere minor exceptions, that the case requires; and they report a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 118.

EXTENDING PROVISIONS OF THE PRE-EMPTION ACT OF 1841.

[To accompany Joint Resolution No. 34.]

JANUARY 20, 1857.

Mr. QUITMAN, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred House resolution No. 34, extending the provisions of the pre-emption act of September 4, 1841, and the acts amendatory thereof, to a portion of the Fort Ripley reservation, therein specified, respectfully report:

That from the letter of the Secretary of War, and that of the delegate from Minnesota, which are herewith printed for the information of the House, the committee are of opinion that the resolution should pass. They accordingly report it back without amendment.

WAR DEPARTMENT,
Washington, April 29, 1856.

SIR: In reply to your letter of the 12th of February, I have to state that this department has had under consideration the expediency of reducing the limits of the military reservation east of the Mississippi river, made for the use of Fort Ripley, and does not doubt that the reduction would be expedient. Under existing laws, however, this department has no authority to dispose of or to relinquish a reservation made since the 3d of March, 1819, and consequently can take no measures to open the reservation to settlement. The necessity of legislation on this subject has, as you must be aware, been repeatedly brought to the attention of Congress.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

Hon. H. M. RICE,
House of Representatives.

HOUSE OF REPRESENTATIVES, *July* 9, 1856.

MY DEAR SIR: In 1848 the Winnebago Indians were removed to the Territory of Minnesota—Fort Ripley was established on the line of their reservation, on the west side of the Mississippi river. To enable the troops to prevent the introduction of ardent spirits into the country, and to give control of the ferry, and of ground for gardens, a reservation was made east of that river, which is about twenty miles long and four wide. Last year the Indians were removed. This reservation has become a serious obstacle to our citizens, lying for so great a length upon that river, the land on both sides being subject to settlement. It is necessary that the citizens should be enabled to make roads and build bridges connecting their various interests through this reservation. Again, so great a reservation prevents that union of interests as would enable the citizens in its vicinity from building school-houses, supporting schools, and doing various other things conducive to the interests of a rural district. I herewith send a joint resolution, and a letter from the Secretary of War, for the consideration of your honorable committee.

With great respect,

H. M. RICE.

Hon. J. A. QUITMAN,
Chairman of Committee on Military Affairs.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 119.

JAMES YOUNG.

JANUARY 24, 1857.—Committed to a Committee of the Whole House to-morrow.

Mr. BISHOP, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred the petition of James Young, report:

The petitioner was for several years, and until 1844, the clerk of the Committee on Claims of the House of Representatives. He received his regular compensation, which was, by the terms of his employment, to be equal to that paid to an engrossing clerk of the House. But he did not receive the additional or "extra" allowance occasionally paid to engrossing clerks by the House. His duties being as important, and very laborious, the same reasons which induced the giving of extra compensation to the engrossing clerks apply with equal force to the case of the petitioner, it seems but right that the original understanding, that his pay should be the same as theirs, should be carried out. A resolution is therefore reported herewith directing him to be paid such additional sum as was paid to an engrossing clerk during the years he was employed as aforesaid:

Resolved, That the Clerk of this House pay to James Young, out of the contingent fund, such sum as he shall ascertain to be necessary to make the annual compensation of said Young, when he was the clerk of the Committee on Claims, equal to that paid to an engrossing clerk of the House prior to 1844, and during the time the service was rendered.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 120.

SHEPHERD & CALDWELL.

[To accompany bill H. R. No. 758.]

JANUARY 24, 1857.

Mr. FLAGLER, from the Committee on the Post Office and Post Roads, made the following

REPORT.

The Committee on the Post Office and Post Roads, to whom was referred the petition of John H. Shepherd and Walter K. Caldwell, late contractors on mail routes numbered 8818 *and* 8849, *also on mail routes* 8819 *and* 8872, *in the State of Missouri, have had the same, and the proofs therewith submitted, under consideration, and respectfully report:*

That in March, 1854, said Shepherd & Caldwell, being farmers in said county of Pike, put in a bid for carrying the United States mail on route 8818, from St. Charles to Hannibal, for three times a week during the suspension of navigation on the Mississippi, to wit: From the first of November till the first of March in two-horse coaches, and three times a week on horseback the balance of the year, for the sum of $2,100 per year, with an additional clause to said bid by which they proposed to carry the mail on said route *six* times a week during the said four months—viz: from first of November till the first of March—in two-horse coaches for $400 additional (or extra) pay, leaving it discretionary with the Post Office Department either to accept the bid for carrying the mail three times a week throughout the year, as aforesaid, for the sum of $2,100 per year, or to accept it with the three additional trips during said four months for $2,500 per year. That said Shepherd & Caldwell, at the same time, also put in a bid for carrying the United States mail on route No. 8849, from Hannibal, Missouri, to Keokuk, Iowa, three times a week for said period of the suspension of navigation on the Mississippi, to wit: From first of November till the first of March in two-horse coaches, and three times a week on horseback the balance of the year, for the price of $1,460 a year, with the additional clause to said bid to perform *three extra trips* during said four months in two-horse coaches for the sum of $500 extra or additional pay, leaving it discretionary with the Post Office Department either to accept the bid for the weekly service throughout the year, as aforesaid, for said sum of $1,460, or to accept it with the extra trips during the said four months for the sum of $1,960. But

soon after said bids were made and mailed to the Post Office Department, said Shepherd & Caldwell became satisfied that they had made a mistake in their estimate for carrying the mail for the said three extra trips during said four months, on each of the routes aforesaid, to the extent of at least $700 a year on the former route and $300 a year on the latter route, or $1,000 per year on the two routes, making some $4,000 of an under estimate for the four years, from the 1st of July, 1854, embraced by the proposals, (a mistake which, if their bid for the three additional trips for the said four months were accepted, and they held by the department to perform the same, would be ruinous to them, limited as were their means and small as was the margin left for any profit, independently of the three additional trips during the winter.) They at once notified the Post Office Department of said error against themselves, by letter and through the then member of Congress from their district, the Hon. Alfred W. Lamb, and requested to be allowed to withdraw so much of their said bids as related to the three additional or extra trips aforesaid; that the same was made purely by mistake, and that they could not possibly carry the mail at that rate for the three extra or additional trips. This notice and request was laid before the Post Office Department at least ten days before the opening and examination of the bids. After this, and on the opening and examination of said bids, said Shepherd & Caldwell were notified that their bids for tri-weekly service on said two routes were accepted; and the postmaster at St. Charles was notified that the said bid of Shepherd & Caldwell had been accepted for tri-weekly service on said first named route; that said Shepherd & Caldwell accordingly filled their bonds with satisfactory security (as required by the instructions of the department) for the tri-weekly service on each of said routes throughout the year, and forwarded and had them filed in the archives of the Post Office Department. This was done in accordance with their said notice to the department, before the said day of letting, and by the request of the department, which was sent along with the bonds in blank, and in accordance with the notice of the department to them in relation to route No. 8849, and the notice of the department to the postmaster at St. Charles and their printed schedule for the route, made out after the letting, and in accordance with the form of the bond sent to them in blank for route No. 8818, all of which was for tri-weekly service alone. Accordingly, on the first of July, 1854, they commenced to carry the mail on each of said routes, and continued to carry it, according to the stipulations of their said bonds, and apprehended no further difficulty, as it appears, on the score of the said erroneous proposal for the three times a week extra trips, till they received, in October, 1854, a letter from the Post Office Department, bearing date October 6, 1854, stating that the department would require them to perform the three extra trips during said four months, on both said routes, for which they would be paid the sums specified in the addition to their original bids sent on; and further stating, that "the clerk employed in drawing the contracts had omitted the additional service, during the suspension of navigation, proposed by them, and accepted by the Postmaster General in connexion with, and at the same time with, their bids for the regular

service. And that, under these circumstances, *new contracts*, embracing the additional service referred to, would be immediately sent them; and that it was expected they would execute them, and return them without delay;" and further stating that, "as they had been before informed, the Postmaster General *had no power to release them* from the obligation of their bids, and that it would become his duty, in case of refusal or failure to perform their part of said obligations, to proceed to relet said routes on the best terms practicable, and charge the damages which might accrue to themselves and their guarantors, for the collection of which the law required a suit in the United States court to be instituted." Under all the circumstances above stated, the said Shepherd & Caldwell did not consider (having acted throughout in good faith, and given the department fair and sufficient notice of *their* mistaken bid, and the department, by its agent's act, seeming to yield to their reasonable request in that behalf) themselves bound, or called on, in morals and good conscience, to enter into the said "new contracts," which they could not, under the peculiar circumstances, perform—if, indeed, they could under any circumstances have done so—and, consequently declined to enter into said "new contracts" so sent to them; but informed the department that they were still willing to go on and perform the service on said routes according to their bonds already given, and filed as aforesaid, or that they were willing that the routes should be let to any other contractors, on condition that the department would release them from further liability on their obligations already filed. This information was communicated to the department by the Hon. Alfred W. Lamb, at their instance. They still continued to carry the mails on said routes, according to their said bonds, tri-weekly—on said route 8818 up to the 1st of February, 1855, and on said route No. 8849 until the 15th of January, 1855, at which dates respectively, or thereabouts, said routes were relet, and the difference charged to said Shepherd & Caldwell, as it appears. The said Shepherd & Caldwell also bid for and had awarded to them, at the same time with the two above named, two other mail routes—viz: routes numbered 8819 and 8872—on which they entered upon the performance of service. Their pay on these two last named routes was withheld, to make good the damages on the two first named routes, and nothing paid them for their services on any of them. Your committee think the said Shepherd & Caldwell should be paid for the times they actually carried the mails on said routes 8818 and 8849, and that, in view of all the circumstances, they should be relieved from all liability consequent upon their having been held to a rigid compliance with their proposals, the performance of which, in full, *a mistake* on the part of the department (as it is alleged to be) gave them good reason to conclude they were forever relieved and exempted from. The amount in question is a small matter to the government, whose policy should ever be to deal fairly and equitably, and not harshly nor oppressively, with its citizens. An enforcement of the extreme legal power of the government in the premises your committee think would oppress the petitioners, and do them great *and manifest injustice; the* allowance of the prayer of their petition, *while it will do "no wrong"* to the government, will be the occasion

of affording a just measure of relief to two of its citizens, who, in the only way left to them, have appealed to its equity and justice. They accordingly report a bill, and recommend its passage.

4TH CONGRESS. } HOUSE OF REPRESENTATIVES. { REPORT
3d Session. } { No. 121.

CHARLES W. CUTTER—SURETIES OF

[To accompany bill H. R. No. 759.]

JANUARY 24, 1857.

Mr. TAPPAN, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the petition of Ralph C. Cutter and others, asking to be relieved from a judgment rendered against them as sureties for Charles W. Cutter, formerly navy agent at Portsmouth, New Hampshire, report:

That after mature investigation of the case, they have come to the conclusion that the relief sought, as aforesaid, should be granted.

The committee find the facts of the case to be, in brief, substantially as follows:

On the 3d of April, 1850, Charles W. Cutter, then navy agent at Portsmouth, N. H., made a requisition upon the Navy Department for $18,400, on account of the floating dock then building at that yard, which requisition, duly approved by the commandant of the yard, was expressly stated to be for the *seventh* payment on account of said dock, the agent stating that the amount would be probably required on the 17th of that month.

On the 23d of April, another requisition was made by said navy agent for the same sum of $18,400, on account of the same floating dock, which requisition was also expressly stated to be for the same *seventh* payment, and which was also approved by the commandant of the yard.

It further appears that the Navy Department, without adverting to the fact that the requisitions expressed on their face that they were for the same payment, forwarded to the said agent double the amount which should have been forwarded, viz: $36,800 instead of $18,400. The excuse for which laches is "the press of business" at the time in the bureau.

It also appears that the $18,400, thus acknowledged to have been wrongfully placed in the hands of said agent, was suffered to remain there fifteen months without any effort on the part of the department to correct its error. At the expiration of which time said agent had become hopelessly insolvent, and was soon after removed from office. Subsequently a suit was brought by the United States in the circuit

court for the district of New Hampshire, and judgment recovered against the sureties for $18,397 98, upon which judgment, execution having issued, a compulsory payment was made amounting to the sum of $8,477 51, leaving the balance still uncollected. The sureties ask to be released from this judgment, and to have the amount thus paid refunded to them from the treasury, and the committee are of opinion that their requst should be granted.

It is clear in this case that the burden thus thrown upon the sureties arose from the acknowledged carelessness of the officers of the government. Mr. Dobbin, Secretary of the Navy, in his letter, dated January 15, 1855, to the chairman of the Committee on the Judiciary, says: "It is very evident that two requisitions were drawn by the navy agent in the same month for the same object. *This ought not to have been so.* It was not discovered by the chief of the bureau at the time, nor until July of the following year, some fifteen months after the transaction. *This ought not to have been so either.*" In the case of the People of New York *vs.* Jansen, (7 Johnson, 352,) a case similar in principle to this, Judge Thompson, afterwards of the Supreme Court of the United States, decided that the sureties, in calculating their liabilities, *had a right to rely upon the performance by public officers of their duty.* This principle was acknowledged and established in the case of Thomas Ap Catesby Jones, surety for a postmaster at Norfolk, Virginia, who was released, by an act of the 33d Congress, from a judgment obtained against him, as well as reimbursed for money paid under said judgment, in consequence of the neglect of the Post Office Department, in allowing funds unreasonably to accumulate in the hands of said postmaster. No principle of equity seems more clear than that a neglect of duty on the part of a creditor, whether public or private, ought to discharge a surety from the consequences of such neglect. The negligence of the government officer in this case has thrown upon the sureties a liability which they never could have contemplated, for they did not undertake to be responsible for the carelessness of the Navy Department.

The committee, therefore, report a bill for the relief of said sureties.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 122.

ROSWELL W. HASKINS.

[To accompany bill H. R. No. 760.]

JANUARY 24, 1857.

Mr. SIMMONS, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom were referred the petition, papers, and proofs in the case of Roswell W. Haskins, of Buffalo, have had the same under consideration, and report:

That the material facts established in the case are as follows: Pierre A. Barker was collector at the port of Buffalo creek in the State of New York during most of the administration of President Jackson, and John W. Clark and Philander Hodge, of Buffalo, together with the petitioner, Roswell W. Haskins, were his bail as such collector.

At the commencement of Mr. Van Buren's administration, early in 1837, Barker was superseded. Barker and all of his bail then thought themselves, and were esteemed by others, to be wealthy; but in the great revulsions that followed in 1837, '38, and '39, their property was swept away, Barker became poor, and Clark and Hodge took the benefit of the bankrupt law of the United States. The petitioner lost over $150,000 by the discharge in bankruptcy of those who were indebted to him; and he, broken down and discouraged, would afterwards have taken the benefit of the bankrupt law, but could not raise money enough to pay the costs of doing so. He is now over sixty years of age, with a large family, four of whom are minors, dependent upon him for support, and to maintain which he receives to some extent the voluntary contributions of his sons over age, who labor with their hands for a living.

From the spring of 1837, when Barker was suspended, until 1841, the bail had not a suspicion that Barker was a defaulter, but believed his accounts with the government were all settled, he having frequently assured them that such was the fact.

During all of that time the government gave no notice to the bail and took no steps against Barker, from which the bail could infer their principal was a defaulter. Some of the bail had large dealings with Barker after he was superseded, and could have saved themselves *without loss had they known* or suspected he was a defaulter.

One of the bail, John W. Clark, paid him $15,000 at one time in the month of August, 1837.

In 1841, the government commenced suit against Barker and the bail, which was the first reason the bail had to think Barker was a defaulter; and in May, 1841, a judgment was recovered in that suit on the bail bond, against Barker and the bail, for $5,537 57 of debt, and $154 28 of damages and costs.

Among other things, Haskins states, in his petition, and in a manner that carries conviction to the committee, as follows:

"Barker is west, in parts unknown to me. This liability I cannot pay, and thus circumstanced, to leave this claim resting on me, is only to cripple my efforts for the support of a large family, without the possibility of any good to the government, whilst it would be an act of personal hardship to me," &c.

The district judge for the northern district of New York, and Judge Clinton, who was afterwards collector of that port, and then district attorney of that district, express their decided convictions that the government will lose nothing by Haskins' discharge, and that the equities of his case are such that the prayer of his petition ought to be granted.

Whilst the committee are of opinion that upon technical rules and principles of law the petitioner is not entitled to relief, yet they have not failed to see that the delay and inattention of the government in taking steps to enforce collection from Barker for four years, is the probable cause of the petitioner being found in his present disagreeable and hopeless condition.

If there was too much confidence reposed in Barker by the bail in relying upon his word as to the adjustment and settlement of his accounts with the treasury, so, too, there was too great a degree of laxity and inattention on the part of the government in waiting until so late a day before commencing the enforcement of the demand.

The committee are fully satisfied that the petitioner is hopelessly poor, and that there is no reasonable expectation anything can ever be collected from him on the judgment.

It ought not to be, and never has been, the policy of any wise and just government to discourage the citizen and keep him in a crippled state of poverty and dependence, restraining his enterprise and breaking his spirit, by holding over him for life a fruitless claim, and playing towards him the part of a severe, hard, and grasping creditor, when, as in this case, he is hopelessly, honestly, and honorably poor; a far better and wiser policy is to release him from such a position and unbind his energies for future usefulness.

Entertaining these views, the committee report the accompanying bill for his relief, and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 123.

HEIRS OF MOSES ELMER.

[To accompany bill H. R. No. 761.]

JANUARY 24, 1857.

Mr. CLANSON, from the Committee on Revolutionary Claims, made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Apollos M. Elmer, for commutation pay of Moses Elmer, surgeon's mate in the revolutionary army, report:

That it appears from the memorial and accompanying papers that the father of the petitioner, late of the county of Essex, in the State of New Jersey, was a surgeon's mate of the continental line of the revolutionary army, and served until the end of the war. He has never received commutation pay. About the year 1837 or 1838, a claim for it was presented to Congress, and a bill allowing the claim was reported and first passed the Senate for $2,400, being the amount due without interest. At the same session it passed the House with an amendment allowing interest, but the bill as amended failed to reach the Senate, and was left among the unfinished business of the session. The committee, believing the facts stated in the memorial to be correct, and that it has been decided in various cases that surgeon's mates were entitled to commutation under the resolution of Congress, report the accompanying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 124.

THOMAS L. DISHAROON.

[To accompany bill H. R. No. 506.]

JANUARY 24, 1857.—Ordered to be printed.

Mr. G. PORTER, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of Thomas L. Disharoon, of St. Louis, Missouri, have had the same under consideration, and respectfully report:

It appears, from the evidence produced before your committee, that the petitioner holds four certain land warrants, one in the name of George Branch, isued under the act of February 11, 1847; one in the name of Louis Pinellot; one in favor of James Callaway; one in favor of Henry Willis, issued February 2, 1849, for one hundred and sixty acres each. It appears, further, from the evidence submitted to your committee, that the petitioner, in good faith, before said warrants issued, bought the right and claim of said warrantees, and took powers of attorney from them, respectively, authorizing him to receive and transfer and dispose of said land warrants, when issued; that said petitioner was an aged and infirm man, ignorant of the law touching land warrants; and that he was advised, and believed that he could, in the manner above named, get a right and title to said warrants, and so bought and paid a fair price for them; and has, under his said powers of attorney, received said warrants, and has them now in his possession. The warrantees named in said warrants have gone to parts unknown, and consider, doubtless, that said Disharoon is, in law, owner of said warrants, as your committee think he is in equity; and it is morally impossible that they can be found to get their assignments on the same, as the law requires, in order to pass the *legal* title.

Your committee consider that the case of the petitioner is a very hard one; it appearing, it addition to the facts above stated, that after he bought and paid for said bounty land claims he went to California, where he contracted disease in the efforts he made to provide a competency for his family and a maintenance for himself; that he is now blind, and has a young and dependent family looking to him for a support.

Under all the circumstances, your committee think the rigid rule *of the law should be relaxed* in this particular case, especially as it

appears that the petitioner is an honest industrious citizen an mere speculator, and that he can be relieved from great hardshi suffering without any injury to the government or third persons prayer of his petition ought to be granted, and the title of said warrants vested in him, and that he be authorized to locate o pose of said warrants; and for that purpose report the accompan bill and recommend its passage.

NGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
ssion. } { No. 125.

ANSON DART.

[To accompany bill H. R. No. 763.]

JANUARY 24, 1857.

TER, from the Committee on Indian Affairs, made the following

REPORT.

nmittee on Indian Affairs, to whom was referred the memorial Inson Dart, late superintendent of Indian affairs in Oregon," tfully report:

Mr. Dart was appointed such superintendent in the year A. , and served in that capacity for the term of nearly three that during the period of his service he had under his super- ice the Indian affairs of all the country now included within ritories of Oregon and Washington; that he was a faithful and discharged his duties in a manner highly satisfactory to ernment; and that during the whole of his superintendency id quiet were maintained amongst all the Indian tribes under , and also between them and their white neighbors; that at e of his appointment the salary affixed to the office was five hundred dollars per annum; but he was assured by the Bureau, and by the Committee of Indian Affairs of the Sen- t a bill, which was soon to be reported, establishing the office intendent of Indian affairs in California, should be made to the superintendent of Indian affairs of Oregon; and that such n had the sanction and approval of the Indian Bureau, but, ent or oversight, the bill was not so reported as to provide nd the bill passed fixing the salary of the superintendent in ia at four thousand dollars, without changing that of Oregon; ich time, and since the termination of the official services of t, it has been considered proper, and Congress has divided itory formerly under his care, and there is now a separate endency for each of the Territories of Oregon and Washing-

evidence before your committee is conclusive that Mr. Dart ot have accepted of this office had it not been for assurances, re entirely satisfactory to him, that he should receive the same *ation for his services* in Oregon that should be given to the *ade of office in California*; but there are other and more *reasons, in the opinion* of your committee, why the pay of

Mr. Dart should be made at least equal to that of the superintendent in California. He was a pioneer in that business on the Pacific, and there was but little known as to the cost of living in that region of country until after his arrival there; and it appearing to your committee, by the statements of Mr. Dart and the evidence in other cases from that region, taken by other parties, that establishing beyond a question the fact that the cost of living there was as great, if not greater, than it was in California during the time of Mr. Dart's service in Oregon.

The services of Mr. Dart having been rendered to the government in an almost unknown country, he should be fully paid, and not be permitted to be the sufferer, as he undoubtedly is, under the pay he has received for his service.

In ordinary cases, your committee would deem it impolitic to increase the salaries of officers subsequent to the expiration of their term; but your committee would respectfully suggest that the case of Mr. Dart should, under all the circumstances, be an exception to the general rule, for the foregoing reasons, and many others that could be given.

Your committee, therefore, report a bill for his relief.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 126.

PETER D. ANKENY.

[To accompany bill H. R. No. 764.]

JANUARY 24, 1857.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Peter D. Ankeny, of Millersburg, Holmes county, Ohio, respectfully report:

The memorialist entered the service of the country on the 6th day of May, 1847, as an orderly sergeant in Captain T. L. Hart's company, (G,) 4th regiment of Ohio volunteers, to serve during the Mexican war. He repaired with the regiment to Matamoras, Mexico. On the 3d day of September, 1847, upon the death of the captain of the company, he was elected second lieutenant thereof, in which capacity he continued to act until the company was regularly mustered out of service at Cincinnati, Ohio. Whilst in Mexico, in the month of July, 1847, he contracted a disease commonly known as the Mexican diarrhœa, which has become chronic with him, reducing the memorialist from a fine, able bodied man to a thin, sickly and delicate invalid, entirely incompetent, by reason of this disease, to contribute to his own support. The committee subjoin, from the abundant proof laid before it by the memorialist, the evidence of Dr. T. G. V. Boling, a doctor of high character, who was acquainted with the memorialist from his boyhood, and is now cognizant of his disability, which throws great light upon the extent of the same. As to the disease being contracted in the service of the country the evidence is conclusive. The memorialist is now receiving the pension of a private, the department having decided that the disease having been contracted whilst he was only a non-commissioned officer that to that extent alone is he entitled to a pension. The committee can see no force in the reasoning of the department. The disease, it is true, initiated whilst he was a private. He continued in service, each day's service increasing its ravages, and when he was holding the commission of lieutenant it assumed its chronic character and forced him to become a pensioner upon his government. The committee are therefore of the opinion that he should receive the pension usually allowed to the grade of *commission he was* holding at the time of his leaving the

service. They accordingly report a bill to that effect, which will be the means of relieving a worthy citizen, who, by his devotion to the service of his country, has been reduced to a condition of health from the effects of which he will never be able to recover.

STATE OF OHIO, }
County of Holmes, } *sct.*

Before me, H. G. Saunders, a justice of the peace within and for the county of Holmes and State of Ohio, duly authorized by law to administer oaths therein, personally came Dr. T. G. V. Boling, of said county, to me well known, who after being by me first duly sworn according to law, deposes and says as follows:

I, T. G. V. Boling, being first duly sworn, deposes and says that I am, and from boyhood have been, acquainted with Peter D. Ankeny, who enlisted in the service of the United States as a private in the company commanded by Captain T. L. Hart, of the 4th regiment of Ohio volunteers, in the late war between the United States and Mexico; that his health at the time of said enlistment was good, that he returned home in the latter part of July, A. D. 1848, laboring under a disease commonly called Mexican diarrhœa, with an impaired and broken constitution; that I have been one of his medical attendants for the last three years, the remedies administered have afforded but temporary relief; he has been and is now laboring under an organic disease of the liver, destroying the healthy functions of that organ and vitiating to a great extent the secretions thereof, in connexion with a weakened and partially disorganized condition of the mucous surface of the stomach and bowels, subjecting him to frequent and violent attacks of diarrhœa and crampings of the bowels; he is at no time free from the effects of said disease. All of which is doubtless the result of the diarrhœa contracted in Mexico while in the service of the United States in said war, rendering him, in all probability, a permanent invalid for the remainder of his life, beyond the power of the remedial agents known to the profession; and am satisfied that said disease has so affected his constitution and powers of endurance as to render him wholly unable to obtain his subsistence by manual labor.

And further says, that said applicant has been of temperate habits, and that he has resided with his father's family since he left said service, and that he has not been engaged in any occupation for his subsistence since leaving said service, to the knowledge of affiant. And affiant further states that he resides, and during all of said time has resided, in the same town with said applicant, and is intimately acquainted with him.

T. G. V. BOLING.

Sworn to by T. G. V. Boling, before me, and subscribed by him, in my presence, this 9th day of May, A. D. 1855; and I further certify, that the said T. G. V. Boling is highly respectable in his pro-

fession as a physician and surgeon, and that I have no interest in the result of the application of said Peter D. Ankeny for a pension, and am not concerned in its prosecution.

In testimony whereof, I have hereto set my hand officially, at my office in said county, the day and year last above written.

H. G. SAUNDERS, *J. P.*

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THE STATE OF OHIO, *Holmes county, ss:*

I, James M. Dirvers, clerk of the court of common pleas within and for the county of Holmes and State of Ohio, do hereby certify that the above named H. G. Saunders was, on said 9th day of May, A. D. 1855, an acting justice of the peace within and for said county, and now is, and that all his acts, as such, are entitled to full faith and credit; and I further certify, that I have no interest in the result of the application of Peter D. Ankeny for a pension, and that I am not concerned in its prosecution.

In witness whereof, I have hereunto set my hand and seal of said court, at Millersburg in said county, this 9th day of May, A. D. 1855.

[L. S.]

JAMES M. DIRVERS, *Clerk.*

DOES NOT CIRCULATE

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 127.

WILLIAM NASH.

[To accompany bill H. R. No. 765.]

JANUARY 9, 1857.—Referred to the Committee on Military Affairs.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of certain officers of the army in behalf of Sergeant William Nash, respectfully report:

The committee call the attention of Congress to the memorial of the officers of the army, as follows:

To the honorable the House of Representatives:

We, your petitioners, respectfully represent: That First Sergeant William Nash, late of company B, 3d regiment of artillery, in an engagement with the Indians of southern Oregon, on the 26th of March last, was severely wounded, and is, in the opinion of examining surgeons, rendered thereby a cripple for life.

He, Sergeant Nash, was, at the time he received the wound, occupying an important and responsible position, usually assigned to commissioned officers, and was performing the duties of that position (the command of the rear guard) with care and humanity. Having fallen some distance behind the column, and dismounted from his mule, he was in the act of placing thereon an exhausted comrade, when he, the sergeant, was shot from an ambuscade.

For these reasons, in consideration of the position occupied by the sergeant, the entire helplessness which has resulted to him from his wound, his generally meritorious conduct, and totally dependent family, we pray your honorable body to allow him, First Sergeant William Nash, a pension of thirty dollars per month, in addition to the eight dollars now allowed to private soldiers who may be rendered

unable to obtain their support, or to allow him such other additional pension as you in your wisdom may deem adequate.

GEO. NAUMAN,
Brevet Lieut. Colonel, Commanding 3d Artillery.
W. W. MACKALL,
A. A. General.
B. M. BYRNE,
Surgeon U. S. Army.
E. O. C. ORD,
Captain 3d Artillery.
D. R. JONES,
A. A. General.
JAS. A. HARDIE,
First Lieut., Adjutant 3d Artillery.
R. B. LEE,
C. S. and Major U. S. Army.
O. CROSS,
Major and Quartermaster.
GEO. P. ANDREWS,
Brevet Major U. S. A., First Lieut. 3d Artillery.
JNO. S. MASON,
First Lieut. and R. Quartermaster, 3d Artillery.
RICHARD ARNOLD,
First Lieut. 3d Artillery.
E. VAN NESS,
Deputy Paymaster General.

BENICIA BARRACKS, CALIFORNIA,
December 1, 1856.

The committee, in view of the evidence so conclusively established as to the merits of the claim of Sergeant Nash, and of the fact that he was performing a duty usually discharged by a commissioned officer, deem a private's pension as too small a consideration for the wound which he received and too bare a pittance to support him in his disability. They accordingly report a bill increasing his pension.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 128.

OFFICERS STATIONED AT FORT KEARNY.

[To accompany bill H. R. No. 766.]

JANUARY 24, 1857.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Captain Henry W. Wharton, respectfully report:

The committee respectfully direct the attention of Congress to the memorial, which reads as follows:

To the honorable Senate and House of Representatives in Congress assembled:

Your petitioner respectfully submits the following petition, viz: That the benefit of the two acts granting extra pay to the officers and soldiers serving in California, Oregon, and New Mexico, in consequence of the high prices of provisions, &c., may be extended to the officers and soldiers then stationed at this post for the same reasons as induced this consideration for those stationed at the above named places. This extra pay was also allowed the officers and men stationed at Fort Laramie, which is situated on the same route as this post, and articles were quite as exorbitant here as they were there, or at any of the posts for which it was given. We are three hundred miles beyond civilization, and dependent entirely upon the commissary store and the suttlers for articles of subsistence, clothing, &c., and he necessarily charges one hundred per cent., and on some things more than this; transportation on everything brought here is from five to six cents per pound. In this wilderness exile, removed from most of the appliances of civilized life, it therefore costs more for the actual necessaries of life than it does for luxuries at posts situated nearer civilization. All of which is respectfully submitted for the favorable consideration of Congress.

HENRY W. WHARTON,
Captain Sixth Infantry.

FORT KEARNY, NEBRASKA TERRITORY,
November 24, 1856.

The committee find the statements contained in the memorial to be true, and believing that a discrimination ought not to have existed to the prejudice of a body of soldiers who were subjected to all the expenses and hazards of those who were stationed in California, Oregon, New Mexico, and Fort Laramie, report a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 129.

WILLIAM BISHOP AND OTHERS.

JANUARY 24, 1857.—Ordered to be printed.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of William Bishop and others, operatives in the Ordnance Department, respectfully report:

The memorialists pray that the present laws giving bounty land to soldiers who served in the war be extended to them, for the reason that during the Mexican war they were assiduous in the discharge of their duties making the munitions of war. The committee think that it would be unjust to place these operatives, who were exposed to none of the hazards of war, who received ample pay for their services, and were not at all called from their homes and families, upon the same footing with the soldier who left his fireside and his relatives and went into the dangers and exposures of conflict. They accordingly ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 130.

URBANO PEREZ.

JANUARY 24, 1857.—Ordered to be printed.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Urbano Perez, respectfully report:

The memorialist was a resident of the city of Matamoras during the Mexican war. After the surrender of that place to the American army under General Taylor in the year 1847, his house and premises were taken possession of by a portion of the American troops, who quartered therein. He was, no doubt, assured that he would be compensated for the use of his premises, which, during their occupation by the Americans, became very much abused. He presented to General Taylor a bill of $838 62 for damages to his premises by the American troops, and $396 rent. He was refused payment, on the ground that it was a military impressment; which decision was concurred in by General Jesup, Quartermaster General, and Mr. Crawford, the Secretary of War. The petitioner now appeals to Congress. The committee concur in the opinion that it is a case of military impressment—a proper exercise of a belligerent right—which gives the memorialist no claim against the United States. The committee therefore ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 131.

BREVET MAJOR JOHN JONES.

JANUARY 24, 1857.—Ordered to be printed.

Mr. WILLIAMS, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Brevet Major John Jones, respectfully report:

The memorialist was at one time a brave and gallant officer of the army, who done great justice to the government by the manner in which he discharged his official duties. He resigned his post in the army on account of bad health. He is now in infirm bodily condition and thinks that the government should do something for him, for the reason of the good service he has performed for it during his life, and of the savings which he effected for it while he was assistant deputy quartermaster general. It does not appear to the committee that the memorialist done more than faithfully discharge his duty, for which he has already received his proper pay and allowances. They therefore ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 132.

ROBERT JOHNSON.

JANUARY 24, 1857.—Ordered to be printed.

Mr. B. CLARKE, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Robert Johnson, respectfully report:

The memorialist claims for arrears of pay under the following circumstances: He was a private in Captain Forsythe's company of United States rifles, and enlisted in the service for five years on the 18th of June, 1809. On the 28th of February, 1811, he is noted sick. The memorialist alleges that becoming sick he received a furlough to go home. He admits himself that on account of his severe sickness he never returned to his company. Notwithstanding this admission he claims arrears of pay. The committee can see no good reason why the claim of the petitioner should be allowed. To do so would be to encourage soldiers to remain at home upon the expiration of their furloughs in contempt of the regulations for the proper observance of discipline which requires their return. There does not, however, appear from the records of the War Department that the memorialist ever received a furlough. If then the record evidence is true, he is a deserter. The committee, however, are disposed to regard the memorialist as having received a furlough. If this be so, and his sickness was such as to prevent his rejoining his command, it was his duty to have notified his commanding officer of his disability. If ever, after the expiration of his furlough, his disability still continued, it was still his duty to have notified his commanding officer of his continued sickness, and at the end of his term of enlistment to have claimed an honorable discharge. He does not appear to have done any of these things. The committee, therefore, in the absence of any evidence of honorable discharge, ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 133.

CAPT. WM. BLACK'S COMPANY, FLORIDA VOLUNTEERS.

JANUARY 24, 1857.—Ordered to be printed.

Mr. B. CLARKE, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Captain William Black's company of Florida volunteers, praying compensation for military services rendered during the Seminole war, respectfully report:

The memorial of Captain Black is as follows:

"*To the honorable the Senate and the House of Representatives of the United States of America in Congress assembled:*

"The memorial of Captain Wm. Black, in behalf of himself and men who were duly organized as a company of mounted volunteers, and called into the service of the Territory of Florida by legal authority during the Seminole war, respectfully represents:

"That by order, dated 2d of March, 1838, emanating from Col. John Warren, commander of the second regiment of Florida militia, your memorialist was empowered to raise a company of mounted Florida volunteers for the protection of the Mandarin settlement; that the issuing of said order was at the instance of the citizens of Florida, who, by a memorial, in view of their helpless and unprotected condition, and exposure to a merciless Indian foe, addressed to Colonel Warren, the commanding officer of the militia, invoked the exercise of the power given to him by law in regard to the military defence of the Territory. That pursuant to said appeal from the citizens aforesaid, among whom were to be found men of high position, not only from public confidence, but from private worth, the said Colonel Warren did issue the order as above stated; and in obedience to which your memorialist and his company did take the field and for six months were under arms.

"Your memorialist, looking to the active services rendered by his men, will not attempt, before your honorable body, to combat by argument the *military abstractions* arrayed by men who never heard the crack of an Indian rifle, and who, remote from the swamp and hammock whence the Indian prowls, and to which he returns after the tomahawk and torch have done their work, smiles with incredulity upon the *military services* of the *frontier* settler. Nor need your memorialist talk to the honorable the members of the west of the

destruction that marks the trail of the wily Indian in a country where log cabins are few and far between. Sufficient for your memorialist is it to know that he obeyed the call of his countrymen, made known through the commanding officer of his district; entered upon the duties assigned him; posted his men; scoured the country; and by their *armed presence* kept off from the settlements the Indian foe.

"As to the necessity of the service, that was not a matter for your memorialist to decide. Being subject to military order, it was his duty to obey, and not his province to question the exigencies which led to the order. That question, therefore, has no bearing on the merits of the claim of your memorialist. All that he has to do, is to show that the service has been rendered; and in proof of which, and of the necessity of the call, he respectfully refers to the testimony submitted.

"So far as military service was performed, the question as to the *quantum* of service, it is respectfully suggested, cannot be raised or graduated by service in the field; as it is evident that the effect of a body of troops concentrated at a post may be as serviceable as when concentrated in the field. Your memorialist, therefore, cannot see the force of an argument which exacts continuous field duties as the only basis of compensation, as it would deprive garrison troops of all pay, and especially a larger portion of the regular troops that served in Florida.

"As to the *opinions formed* by the board of officers of the War Department relative to the services of your memorialist and the men under his command, it may be said that great allowance should be made for a *statement in reference to events years after their occurrence.*

"A calm review of past transactions in times of trouble and peril may enable the reviewer to come to conclusions entirely adverse in every particular to those drawn by the active participants in the scenes reviewed. Men become wise after events; but in the hour of alarm, with the glare of a neighbor's cabin and the whoop of a savage foe breaking upon the senses, the philosophy of man is not so cool, nor is his conduct generally the wisest.

"To measure the *rights* of citizen-soldiery, who from a public sense of duty combine and organize to protect a defenceless settlement, by a system of rules intended to prescribe the action of the *soldier by profession*, where system is everything, and pay the moving principle of patriotism, would be contrary to the dictates of common sense and to the genius of our institutions. This must be obvious to all who reflect upon and appreciate the promptings of patriotism. Burdens imposed by extraordinary exigencies should be borne equally by all, and it is by consolidating the general feeling into one that the energy of a nation is displayed and its greatness developed. Therefore, it would appear to your memorialist to be extremely unjust to fetter his rights by *such rules*—rules superinduced by the watchful jealousy of civil polity, to guard against the ambitious encroachments of those *whose profession is arms.*

"The troubles of 1838 are too fresh in the memory of the inhabitants of Florida. The precipitate flight of seven hundred Indians from Fort Brook, in May, 1837, in violation of the capitulation at Camp Dade the preceding March, spread alarm throughout the settlements

of Florida, and caused the greatest terror. Nor was this state of apprehension mitigated by the reflection that all the troops had been disbanded under the impression of restored peace, in consequence of the said capitulation. Your memorialist, however, does not deem it necessary to further amplify on this subject, with a view to show the necessity for the services of the companies called out by Col. Warren. The inhabitants of the counties of Duval, Alachua, and Columbia realized the dangers; the militia were ordered out, took the field, and, by their *armed presence*, rendered the country secure.

"In conclusion, your memorialist would briefly advert to the character of the war. It was a conflict with Indians whose mode of warfare is entirely different from that practised by civilized nations. It is seldom that they are to be met in open field; the conflict is by surprise, and brief; they have no locality; they are everywhere, and seldom to be found. Their country is almost inaccessible. To hunt them up requires supplies and transportation, both of which are frequently not to be had; consequently you must adapt the warfare to the peculiarities of the foe. From the topography of the country it was deemed best to concentrate troops by having a cordon of posts, so as to form a line of defence across the peninsula, and by scouting confine them to a particular region of country. This was the only practicable mode within the means of the settlers, and was adopted by them.

"This mode of protecting the settlements manifestly involved arduous duties, as from the distance travelled when scouting, without the means of transportation, and from the exhausted condition of their horses, the men would be compelled to return to the post.

"Thus the several parties would alternate, and when not scouting would be on guard for the protection of the settlement. Your memorialist avers, that from the services thus rendered over a widely extended country, the settlers were enabled in safety to cultivate their farms; and it is for such services faithfully rendered that compensation is claimed. It is sought of your honorable body from a conviction of right. It is asked for as a matter of justice in the spirit and language of freemen. The period of service for which pay is claimed commences on the 10th of March, and terminates on the 10th of September, 1838.

"And your memorialist will ever pray, &c.

"WILLIAM BLACK,
By GEORGE MACKAY,
Attorney in fact."

Resting the case upon the merits of the *ex parte* statement of the memorialist, the committee see nothing in it which, admitting it all to be true, shows that Captain Black's company was employed by any competent authority, or that there is anything in the case made out by him which gives him a claim against the general government for the services of himself and his company. Nor is there anything in the abundant evidence which he has laid before Congress *to justify said claim. All* the proof goes to show that the memorialist *was a brave and gallant* man; that his command was composed of the

most heroic and valorous material. But the committee beg leave to suggest that no matter how brave, gallant, heroic, or valorous a company of volunteer soldiers may be, or what services they may have performed under the pretext of protecting their own property and firesides or those of their neighbors from destruction, and themselves and their families from murder, such services irregularly performed (at a time when there was an ample United States force in Florida, when there was a regular way of enlisting the services of militia) under the mere order of a militia colonel, gives the company no foundation for a claim against the United States. The memorialist bases the claim of himself and command for pay from the general government, upon the mere fact that Colonel Warren, a militia colonel of the Territory of Florida, authorized him to enlist the services of a company, and take the field for the protection of the Mandarin settlement. Is a militia colonel the proper source from whence an order should emanate to justify the general government in paying such a claim as that set up by the memorialist? If so, then every militia colonel in the United States, upon the mere pretext of an exigency, can call volunteers in the field, and thereby give them a good and substantial claim against the United States for pay for their services. To what an unlimited field of expenditure will the correctness of such a principle, if admitted, lead the government. The vast extent of our treasury resources would fast be contracted under the practical results of such a principle.

It appears that at one time this Colonel Warren, who, it is alleged, ordered Captain Black's company into service, was in the United States service, but had been discharged previous to the time that it is alleged he called the memorialist and his command into the field. If Colonel Warren had authority as a colonel of militia to call a company of militia into service, Captain Black's company was a company of volunteers not subject to his orders. It appears, however, from the evidence, that Colonel Warren himself considered the militia of Florida as broken up and disregarded after the commencement of the war. The conclusion then is inevitable, that if Colonel Warren did call this company into service, he did so without the shadow of official station, leaving out all question as to authority to give him the least claim to be regarded in the matter. He was not in the service of the United States, having been discharged previous to the alleged call by him of this company into the service. If he had been in service, he would have had no authority to make the call, Colonel Twiggs being in command of the sub-district embracing the location of the alleged services of this company. If he made the call as a colonel of militia, he considered the militia as *functus officio*, and therefore, according to his own showing, could vest no authority to make the call upon such a basis. If the militia was in existence, he had no authority to make the call. Thus it will be seen that nowhere can there be found a shadow of pretext for the call of this company into the service, nor the least particle of reason which would justify your committee in reporting a bill for the relief of the memorialist and his command.

The committee are unwilling to establish a precedent which would

open the doors of the treasury to every company of men who might, under a mistaken apprehension of danger, take up arms, and, failing to have their services enlisted regularly, consider themselves as doing military duty and as entitled to pay from the United States. The committee, therefore, ask to be discharged from the further consideration of the memorial.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 134.

JOHN W. COX.

[To accompany bill H. R. No. 289.]

JANUARY 24, 1857.

Mr. TALBOTT, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred a bill for the benefit of John W. Cox, with the papers, reports, and certificates, have had the same under consideration, and submit the following report:

It appears, from the evidence on file, that the said John W. Cox, in consequence of a disease of the eyes, contracted while in the service of the United States as a mounted dragoon, under Captain R. Homes, is now, and has been for more than twenty years, totally and entirely blind; that he is a sober, upright, and clever man, esteemed by all who know him for his patriotism, probity, and good understanding. The original certificate of his discharge by Captain Homes, as well as the original certificate of the surgeon, as to the condition of his eyes when he was discharged, have been either lost or mislaid. But, from a report of the Committee on Invalid Pensions, now on file with the papers, and made to the House on the 20th June, 1834, specific mention is made of both, from which it appears that the said John W. Cox, on the 13th day of June, 1833, at the city of Louisville, in the State of Kentucky, enlisted as a mounted dragoon, under the said Captain Homes, for the term of three years. That at the time of his enlistment he was a sound and healthy man, free from all bodily defects and infirmities, and shortly after his enlistment he was attacked with a disease of the eyes, which resulted in total and hopeless blindness. It appearing evident that the cause of the present disability of said Cox having been certainly contracted while he was in the actual service of his country, and in the line of his duty, the committee think it but justice that he should receive a pension. They have, therefore, authorized me to report the bill back to the House, with the opinion that it ought to pass.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 135.

JOHN MONTY.

[To accompany bill H. R. No. 769.]

JANUARY 24, 1857.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of John Monty, praying to be paid his bounty money, gratuity, and land, report:

That the petitioner, under oath, declares that he served as a warsman in General Hazen's regiment, or Congress regiment; that he never received his bounty money, or the gratuity of eighty dollars, promised by resolution of Congress to those soldiers who enlisted and served to the end of the war, and that he is a United States pensioner. In the supplementary petition he states that the land granted to him under the acts of Congress of March 3, 1855, and amended by act of May 14, 1856, is withheld by the Commissioner of Pensions. The petitioner relies on the records and evidence on file in the Pension Office to substantiate his claim; and they are furnished, through a communication from the Commissioner of Pensions, in answer to information called for by your committee. He states that "no soldier by the name of John Monty, of Hazen's regiment, received his bounty money and the $80 reward promised by resolution of Congress of May 15, 1778," neither did any "soldier by the name of John Monty" receive "his bounty land for services in the revolutionary war;" that a soldier named "*Jacque* Monty served to the close of the war in Hazen's regiment, and received the gratuity of $80 and one hundred acres of land as such warsman; that in the printed copy of the return of warsmen, made by the board of war in the land registry, and in our transcript of the rolls of Hazen's regiment, the name is spelled *Jacque*, in another transcript it is spelled *Jack;*" that "Hazen's regiment was made up mostly of Canadian refugees, and Monty was, in all probability, a Canadian Frenchman; that the French language, as spoken in Canada, is a great deal corrupted, and there seems to be no reason to doubt that the word *Jacque* is a contraction for the French word *Jaques*, which answers to the English *James*, and written as pronounced; that John Monty applied for and obtained a pension under the act of *March 18, 1818, and his* pension has been continued to him under the *act of 1820;" that* "this pension was granted for the same service

performed by Jacque Monty in Hazen's regiment;" that "it is understood that the roll bearing the name spelled *Jack* was the one referred to in allowing claims under the act of 1818;" that "it would require very clear and strict proof to establish the fact, to the satisfaction of this office, that the name *Jaques* had been transformed into the English *John* through the several mutations of *Jacque* and *Jack*, although such may have been the fact;" and that "the application of John Monty for bounty land under the act of March 3, 1855, has been suspended solely upon the grounds herein stated."

It is further proved by the petitioner that his father, Francis Monty, was a lieutenant in the Canadian regiment, (see American State Papers, "Claims," page 94,) until six of his sons were enrolled as soldiers, viz: Francis Monty, jr., James Monty, Joseph Monty, Placide Monty, Amable or Abraham Monty, and John Monty, all of whom were pensioned under the act of 1818.—(See pension lists of New York, county of Clinton.) The said James or Jaques was pensioned under the said act of 1818, and died July 9, 1819. And the said John or Jack was pensioned under the same act, and the only survivor of a family of nine children and one hundred and ten descendants. It is unnecessary that your committee should animadvert further on the testimony in the case before them. From the showing of the Pension Office, John or Jack Monty never did receive the bounty. Gratuity and land he was clearly entitled to; and if Jacques or James did, (of which there can be no doubt,) your committee cannot see any good reason why the prayer of the petitioner should not be granted, and the resolution of Congress passed at the second session of the second Congress extended to him, which resolution is in the following words:

"*Resolved*, That provision ought to be made by law for donations of land to the Canadian and Nova Scotia refugees, in conformity with the resolutions of Congress of the 23d of April, 1783, promising the same."

And they report a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 136.

BASIL MIGNAULT—CHILDREN OF.

[To accompany bill H. R. No. 770.]

JANUARY 24, 1857.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Peter M. Mignault, report:

That it appears from the papers and testimony transmitted from the Pension Department, that Basil Mignault, a resident of Chambly, in the county of Kent, Lower Canada, on the 20th of November, 1828, made and filed his application for a pension under the act entitled "An act for the relief of certain surviving officers and soldiers of the army of the revolution," approved on the 15th day of May, 1828. That by the rules of the department, the claimant was required to make oath in support of his declaration, in addition to other evidence offered.

The applicant in this case made oath that in the month of September, 1775, he joined the American army, under General Montgomery, at St. John's, Lower Canada; that he was commissioned by General Montgomery a lieutenant in Captain Arnold's company in Colonel Livingston's regiment; that he served in that capacity at the taking of Chambly, St. John's and Montreal, and at the siege of Quebec; that on the day of the attack, in consequence of intoxication of his captain, and the absence of two other captains, he was appointed to command three companies by command of General Montgomery, who, at the same time, presented him with a sword and gun as a mark of respect for his services; that he, under Colonel Livingston, commenced the attack at the gates of the St. John's suburbs, and that he, with his own hand, set fire to the gates; that after the siege was raised he retreated with the army to St. John's, where he received a furlough to return home to visit his father, who lay sick, and had sent for him, and on his return home was taken prisoner by the English, and tried for assisting the Americans. He was, however, acquitted, in consequence of their not being able to get witnesses, who had retreated into the United States. That he exerted himself to escape to the States and join his company again, but was prevented by spies appointed to watch his movements. That after he was tried,

he was let out on parole not to leave the parish of St. Dennis; and at the time he received his furlough he also received a certificate from Colonel Livingston of the amount of wages due him; and that he never received anything for his services, except ten dollars; that his commission, &c., was delivered to one Benway to get pay for his services and losses, and he was drowned and his papers lost. The truth of his declaration was supported by the testimony of a witness who enlisted as a private in the same company, and served under the orders and command of said Lieutenant Mignault, from the time he joined the American army at St. John's until he was taken prisoner, corroborating the said Lieutenant Mignault in all the particulars of his services, and imprisonment, and parole to the limit of the parish of St. Dennis during the war.

There being no record evidence of the services, the de artment called for further corroborating evidence; and it appears, while evidence was collecting, in compliance with the requisition, and some had been obtained, he died, to wit, on the 20th day of June, 1832, and no further prosecution of the claim was made until now. The evidence the old man was collecting, in order to renew his claim, is now offered in connexion with the papers and testimony on file in the Pension Office, a duly certified copy of which has been furnished your committee from the Commissioner of Pensions. This additional evidence is corroborative of the main statements before given, and, in the opinion of your committee, there is evidence sufficient to entitle the children of the officer to all the benefits which were intended to be conferred on the officer by the act of May, 15, 1828, as also under the acts of September 16, 1776, and resolution of October 21, 1780, granting half-pay, &c. It further appears by the Pension Office papers transmitted to your committee, that he did not receive the quota of land to which he was clearly entitled, unless, unfortunately, his being a prisoner under parole to the close of the war should be construed not to be service. But your committee believe otherwise; and knowing that Congress, previous to and at the time of the expedition in Canada, issued and caused to be circulated proclamations, (see Journal of Congress, vol. 1, pages 40 to 45, and 74 to 76, 245 to 246,) inviting the Canadians to join our army, and they should be protected; and that Lieutenant Mignault, having responded to the same, by reason of which he was deprived of his property and liberty, and having received only ten dollars for his services, your committee believe the several acts of Congress before mentioned were intended to benefit officers of the class and character of the services rendered by the officer in question, and they recommend a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 137.

HENRY TAYLOR.

[To accompany bill H. R. No. 771.]

JANUARY 24, 1857.

Mr. ROBBINS, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Henry Taylor, have had the same under consideration and report:

That Henry Taylor was a sergeant in a company of light horse, commanded by Captain Herman Camp, of New York, and was in service in the war of 1812, and was present at the battle of Queenston, on the 13th October, 1812. The battle took place on Queenston Heights, in Canada. As the light horse had no way to cross the river, their services as light horse were not needed. The petitioner, however, as a good soldier, volunteered to assist a squad of men to manage the firing of a heavy piece of artillery. Being near the cannon, the often report of the same injured his ears, causing severe pain and deafness, from which he had never recovered or improved, as to deafness.

The above facts are well established by the testimony of two surgeons, certified to be highly respectable in their profession. The deposition of his captain, Herman Camp, the depositions of several of his companions in arms, and who were present with him on the day of the battle and heard him complain of pain and deafness on that day, and who had known him intimately since that day, and had at all times noticed the deafness complained of.

The character of the petitioner for truth and veracity, as to his own statement of his own case, is supported by the depositions of two ex-members of Congress, one first judge of the county, one Rev. D. D., and six or eight highly respectable witnesses, all of whom had known him from thirty-five to fifty years, making sixteen witnesses or depositions in support of the truth of the allegations. It is further in proof that the petitioner's family, father, mother, brothers or sisters are not inclined to deafness.

The committee report a bill for his relief and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 138.

SAMUEL GOODRICH, JR.

[To accompany bill H. R. No. 772.

JANUARY 24, 1857.

Mr. ROBBINS, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Samuel Goodrich, jr., report:

That in September, 1814, the petitioner entered the service of the United States in the militia, in Oswego county, New York, and marched to Sackett's harbor, New York; there in camp he was exposed to the hardships of a soldier; destitute of barracks, exposed to the wet, sleeping on the wet ground, he was seized with the prevailing camp distemper, which soon became a bilious fever and inflammatory rheumatism, which caused the formation of many tumors upon his body and limbs, that were often lanced, resulting, finally, in the formation of an abscess on the left hip, injuring the hip-joint, contracting of the muscles, shortening of the left leg, making it almost useless, attended with extreme pain; on reaching home he was confined to his bed or room one year and a half, and since that day he has continued a cripple, unable to perform hard labor, with a diseased hip incurable, and without hope of improvement.

The above facts are established by the testimony of Doctor Moses R. Porter, who attended him on his reaching home, five days after he left camp, and the testimony of Surgeons James A. Thompson and A. L. Thompson, who were his constant physicians after Doctor Porter left for Ohio, and who have since that day been his physicians, all confirming the truth as to the formation of an abscess on the left hip, causing lameness—a disease and lameness beyond the hope of cure or of improvement.

The service, the sickness in camp, the continued sickness after reaching home, the result of his sickness in the formation of an abscess, causing lameness, and crippling him, is further supported by the testimony of nine witnesses, certified to be respectable and credible; the surgeons are certified to be respectable in their profession.

The committee beg leave to report a bill for his relief, and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 139.

SHOVE CHASE.

[To accompany bill H. R. No. 973.]

JANUARY 24, 1857.

Mr. DICKSON, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition and papers of Shove Chase, having had the same under consideration, beg leave to report:

The petitioner proves by his own oath, and the certificate of the captain, that he enlisted at Staten Island, in the State of New York, the 19th day of December, 1812, for one year in the war of 1812. That while in said service he had the misfortune to break his arm by a fall while passing from one post to another in the dark. He also proves, by the surgeon of the army who attended him, and also by the certificates of two surgeons of his own county, by the former that he was in the line of his duty when the injury was received, and by the surgeons of his county that the injury still continues. His neighbors certify that he has not at any time been qualified to perform manual labor, excepting with the right hand; that he has refused to receive or rather apply for a pension, while he was able to earn his board by doing small favors for his neighbors. He is now aged and unable to support himself; the injury of his wrist increasing instead of getting better. The committee deeming this a case where relief should be granted, introduce the accompanying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 140.

THOMAS BERRY.

[To accompany bill H. R. No. 774.]

JANUARY 24, 1857.

Mr. PIKE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Thomas Berry, have had the same under consideration, and ask leave to report:

That from the proof in the case, it appears that the petitioner enlisted in December, 1812, into the military service of the United States, under Captain Robert Snell, that he served in said company until the last of March, 1813, when he marched to Burlington, Vermont, and joined the volunteer regiment of infantry commanded by Colonel Denny McCobb, and was there transferred to Captain Joshua Danforth's company.

Dr. James Bates, in his deposition put into the case, says: "That in the campaign of 1813, I was acting surgeon's mate in the regiment of volunteer infantry commanded by Colonel Denny McCobb; that I was then well acquainted with Thomas Berry, a private in Captain Joshua Danforth's company; that at Burlington, Vermont, he was attacked with the measles in the month of May of that year, that owing to exposure, the disease so affected his lungs that he remained sick six weeks; that by this sickness his constitution received great injury."

Dr. Bates and Dr. Turner, the petitioner's family physician, both agree in their statements that the petitioner, as late as 1854, was affected with a disease of the right lung, which they both state in their opinion was caused by said sickness. Other testimony proves, to the full satisfaction of your committee, that the petitioner, prior to said sickness, was an able bodied, healthy man, and that in consequence of said sickness he has never since been well, and never can recover so as to be a well man hereafter.

Dr. Bates says further, that the petitioner, although only sixty-two years old, (1854) is one-half disabled from doing the labor of a healthy man of that age.

A large amount of other testimony corroborates this statement. *We believe this a meritorious case, and recommend the passage of the accompanying bill.*

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 141.

SIMON RECORD.

[To accompany bill H. R. No. 775.]

JANUARY 24, 1857.

Mr. PIKE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of Simon Record, have had the same under consideration, and ask leave to report:

That from the rolls in the Pension Office it appears that the petitioner was a private in the companies commanded by Captains Bryant and Danforth, United States volunteer militia, in the war with Great Britain in 1812; that it appears from the rolls of Captain Danforth's company that the petitioner was "*sick*" while in the service.

It further appears from the deposition of Dr. James Bates, who was acting surgeon's mate to the regiment to which the companies of Captains Bryant and Danforth were attached, that he were there acquainted with the petitioner; that he was there sick with a complication of diseases, called the "measels," "mumps," and "fever and ague."

He further says, that "he examined the petitioner in December, 1854, and found him lame in the left leg from the hip to the foot, and that said leg is much smaller than the right one in all its length; that I am satisfied the petitioner has never enjoyed perfect health since he left the army; that he is now unable to obtain a livelihood by manual labor."

From other testimony in the case we have no doubt the petitioner was a well, robust man before this sickness, when in the service of the United States, and from the whole testimony we are satisfied that the petitioner never fully recovered from said sickness; that his present lameness was originally caused by the same, and that he is totally disabled from performing manual labor. We therefore recommend that he be relieved by the passage of the bill herewith reported.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 142.

JAMES O. BEAN.

[To accompany bill H. R. No. 776.]

JANUARY 24, 1857.

Mr. PIKE, from the Committe on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the petition of James O. Bean, have had the same under consideration, and ask leave to report:

That from documents in the Pension Office, it appears that the petitioner served as a private in Captain Romayne's company, in the 3d regiment of United States artillery, eighteen months from the 10th day of March, 1813. On the roll of said company, from the 30th of June, 1813, to the 31st of August, 1813, the petitioner is noted as "*sick.*" Other evidence in the case fully corroborates the *service* and *sickness* of the petitioner.

From the evidence it further appears, that the petitioner was but sixteen years of age at the time of his enlistment into said service; that the company to which he belonged was, in military parlance, "*heavy* artillery;" that prior to the sickness of the petitioner, it had forced marches, and that the soldiers were much exposed to the cold and inclemencies of a rigorous climate—in the northern part of the State of New York, and in Canada.

The diseases contracted by him in the army are described in the testimony of his physician as "chronic affection of the liver, chronic diarrhœa, indigestion, disorder in his kidneys and urinary organs, accompanied by general debility." That he contracted these diseases in the service of the United States is satisfactorily proved.

Dr. Hadley testified that he knew the petitioner as long ago as 1811; that he was, "from 1815 or 1816, his family physician for a number of years, and had prescribed more or less for the petitioner up to 1853; that he was, during all this time, troubled with the before mentioned diseases." Dr. Towle testifies that he had been acquainted with petitioner for more than thirty years last past, and that he had, during the whole of said time, been troubled with said diseases. He further says, "I am well satisfied that these diseases were occasioned by exposure while in the United States service, in the war of 1812." The evidence further proves the petitioner to have been totally disabled for many years past, with no hope of ever obtaining relief. We are satisfied the petitioner has made out a case which clearly entitles him to relief, and we recommend the passage of the accompanying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 143.

ALLEN SMITH.

[To accompany bill H. R. No. 777.]

JANUARY 24, 1857.

Mr. PIKE, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the petition and accompanying papers of Allen Smith, make the following report:

That it appears from the affidavit of the petitioner, (and his statement is corroborated by the certificate of the adjutant general,) that he enlisted into the company of Captain Weeks, 11th regiment of United States infantry, on the 20th of May, 1812, for five years, and served the full period of his enlistment, and was honorably discharged.

It further appears from his statement that he was transferred to the recruiting service, being a drummer, and was ordered from place to place; that whilst stationed at Plattsburgh, New York, he had an attack of measles, and before he had entirely recovered, was ordered to Champlain, in the same State, and whilst there, and in feeble health, he was obliged to encamp in the woods, without covering, exposed to the cold, wet and snow, which produced sickness, and from the effects of which he has never recovered, but, on the contrary, he has grown worse, until he is now wholly incapable of supporting himself, and that his present disabled condition is owing to disease contracted whilst in the discharge of his duty as a soldier. Two or three respectable physicians fully confirm his statement as regards his present disability, and give it as their opinion that it is in consequence of exposure to the inclemency of the weather. It also appears from the affidavit of the officer who enlisted the petitioner, (Gould,) and who served with him during the whole five years, and also by that of Lieutenant Stephenson, who also served with him, that he (the petitioner) was, at the time of entering the service, a strong, able bodied man, and that his present disability is the result of an incurable disease, contracted whilst in the army and in the discharge of his duty.

In view of the foregoing facts, and in consequence of the valuable service of the petitioner, your committee report a bill for his relief, and *recommend its passage.*

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 144.

JOSEPH BAILEY.

[To accompany bill H. R. No. 778.]

JANUARY 24, 1857.

Mr. LUMPKIN, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom was referred the application of Joseph Bailey, for a pension as invalid soldier of the war of 1812, *submit the following report:*

That it satisfactorily appears, from the testimony submitted, that Joseph Bailey was a soldier in Captain John McWhorton's company, in the first Virginia regiment, commanded by Colonel John Connell, in the Virginia brigade, commanded by General Leftwell, and marched with said company to Point Pleasant, Virginia, in the year 1812; that he entered the military service a young man, and in good health, and that while in the service, and in the line of his duty, he became diseased in one of his knees, which rendered him incapable of performing military service, and he was discharged, upon surgeon's certificate, for disability, at Point Pleasant, in the month of October, 1812; and it further appears, from the testimony of surgeons of high respectability, who reside at Clarksville, Virginia, and who are well acquainted with the applicant, that his lameness and suffering with his leg is the result of the exposure to which he was subjected while he was in the military service of the United States, in consequence of which he was discharged from military service of the United States in 1812. Your committee beg leave to report the accompanying bill for his relief.

TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
3d Session. } { No. 145.

ELIJAH DAILEY.

[To accompany bill H. R. No. 779.]

JANUARY 24, 1857.

r. LUMPKIN, from the Committee on Invalid Pensions, made the following

REPORT.

he Committee on Invalid Pensions, to whom was referred the petition of Elijah Dailey, would beg leave to submit the following report:

That he was a private in the company commanded by Captain Sta-eton, in the 39th regiment of Maryland militia, in the war with reat Britain, declared by the United States in 1812; that while in the ne of his duty at North Point, near the city of Baltimore, on the 12th f September, 1814, he was struck by a musket ball, which still remains n his head, by which casualty the sight of his eye was entirely de-troyed; that on the 17th day of May, 1817, his name was inscribed n the pension list roll of the Maryland agency, at the rate of $5 33 er month, to commence on the 20th of November, 1814, on account f the said wound and disability. The loss of an eye to one of his rofession, that of shoemaker, amounts to a disability of the highest egree, because it incapacitates him from making a living by his rade, and as such entitled him to be put on the pension roll at the ull pay of a private, or at the rate of eight dollars per month. In he month of February, 1855, upon his application, the Secretary of he Interior increased his pension to eight dollars per month, to com-ience from the first day of February, 1855. He now asks Congress o pass an act giving to him the difference between $5 33 per month nd eight dollars per month—that is, two dollars and sixty-six cents er month, from the 20th day of November, 1814, and the first day of 'ebruary, 1856.

It is clear to your committee, that if the loss of an eye amounts to total disability in 1856, the same disability exactly amounted to the ame degree of disability in 1814. But for a misconception of the ule with regard to the loss of an eye by the examining physicians, e would have been placed upon the pension roll at full pay at the ime of the first enrolment.

Your committee would therefore beg leave to report the accom-anying bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 146.

GEORGE W. BISCOE.

[To accompany bill H. R. No. 781.]

JANUARY 24, 1857.

Mr. TAYLOR, from the Committee on Claims, made the following

REPORT.

The Committee on Claims, to whom was referred the memorial of George W. Biscoe, asking indemnity for the loss of the schooner "Speedwell," in the war of 1812, *have had the same, together with the evidence submitted in support of the same, under consideration, and now report:*

The memorialist represents that he was the owner of the schooner "Speedwell," in the year 1814, which was at that time a new vessel, and engaged in trading between the port of Nottingham, on the Patuxent, and the city of Baltimore; that this vessel was captured in the Patuxent river in the course of that year by the British fleet, which had ascended the river in pursuit of the flotilla of Commodore Barney; that after its capture the schooner was converted into a tender to the "Royal Oak," a British man-of-war; and that she was lying off the city of Mobile, in the waters of the United States, at the date of the exchange of the ratifications of the treaty of peace between the United States and Great Britain, on the —— day of February, 1815.

The claim is made under the first article of that treaty of peace. The clause or portion of the article upon which it is founded, is in the following words: "All territory, places, and possessions whatsoever taken by either party from the other, shall be restored without delay, and without causing any destruction or carrying away any of the artillery originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty, or any slaves or other private property."

Difficulties grew up between Great Britain and the United States as to the proper interpretation of this clause; and the questions at issue between them with respect to it were, in pursuance of the convention between the two countries, of the 20th of October, 1818, submitted to the Emperor of Russia, as a friendly arbitrator between them. His Imperial Majesty's award was made on the 22d of April, 1822, and

was to the effect "that the United States of America" were "entitled to a just indemnification from Great Britain for all private property carried away by the British forces; and as the question regards slaves more especially, for all such slaves as were carried away by the British forces, from the places and territories of which the restitution was stipulated by the treaty, in quitting the said places and territories." And "that the United States" were "entitled to consider as having been so carried away, all such slaves as may have been transported from the above mentioned territories on board of the British vessels within the waters of the said territories," &c. Under this award, which was adopted by the parties arbitrating, vessels and every other species of private property, as well as slaves, taken out of the waters of the United States after the treaty took effect, were to be paid for by Great Britain.

Soon after this award was made, a second convention was entered into by the two countries on the 12th of July, 1822, for the purpose of carrying the award into effect. This convention provided for a joint commission to ascertain the value of the private property for which Great Britain was to pay the citizens of the United States. Various differences, however, grew up in relation to the execution of that convention, which were finally terminated by the convention of the 13th of November, 1826, in which Great Britain agreed to pay, and the United States to receive, "for the use of the persons entitled to indemnification and compensation by virtue of the decision" of the Emperor of Russia, and of the convention made to carry it into effect, "the sum of twelve hundred and four thousand nine hundred and sixty dollars, current money of the United States, in lieu of, and in full and complete satisfaction for, all sums claimed or claimable from Great Britain, by any person or persons whatsoever, under the said decision and convention."

At the session of Congress immediately following this convention, provision was made for the adjustment of the claims of persons entitled to indemnification, under the first article of the treaty of Ghent, and for the distribution among such claimants of the sum paid, and to be paid by Great Britain, under the convention of the 13th of November, 1826, by an act approved March 2, 1827. This act created a board of commissioners who were authorized to investigate and decide upon the claims presented under the treaty. Payments on these claims were not to exceed the sum of $1,204,960, received from Great Britain under the last convention; and the commission was, by the act, not to continue after the end of the next session of Congress. But afterwards, in another act, that of May 9, 1828, the existence of the commission was prolonged to the 1st of September of that year.

The claim of the memorialist was submitted to the board of commissioners, agreeably to the provisions of the act creating the commission, and was by the commissioners rejected on the 27th of August, 1828, only four days before their power terminated under the act calling them into existence. The reason for the rejection of the claim is not known to your committee, but it is believed to have been for insufficiency in the proof that the vessel was in the waters of the United States when the treaty took effect; because it is perfectly clear

that upon that ground, and no other, could there have been a decision against a claim for the value of the vessel.

The waters of the United States, within three maritime leagues of the line of coasts, are as absolutely a part of the territory of the United States as any portion of its soil which is in actual cultivation by its inhabitants; and when those portions of our territory which had been in the possession of Great Britain, through the operation of her fleets, were delivered up to us "upon the exchange of the ratifications" of the treaty, the right of the former owner of a vessel which had been captured by the enemy, and which was at that time in the waters of the United States, revived under the law of nations, and the vessel became his absolute property in virtue of the right of *post liminium* as completely as though it had never been captured or no war had taken place.

"The sovereign," says Vattel, "is obliged to protect the persons and goods of his subjects, and defend them against the enemy; therefore when a subject or any part of his substance has fallen into the hands of the enemy, should any fortunate event bring them again into the sovereign's power, it is certainly incumbent on him to restore them to their former state; he is to re-establish the persons in all their rights and obligations, to give back the effects to the owners; in a word, to settle everything as they were before they fell into the enemy's hands." And again, in another place, he says: "Provinces, towns and countries, which the enemy restores by the treaty of peace, are certainly entitled to the right of *post liminium*. For the sovereign, in whatever manner he recovers them, is, on their returning under his power, to restore them to their former state."

The right of the owner of a vessel which had been captured by the enemy, and which was in the territories restored by the treaty of peace at the time of its restoration, would then have existed, though there had been no clause in the treaty of Ghent stipulating that no private property should be carried away; and it would have been the duty of our government to have insisted upon the return of the vessel carried away in violation of this right of our citizens under the law of nations, or upon the payment of its value. But, however that may be, the sum of twelve hundred and four thousand nine hundred and sixty dollars was acknowledged by Great Britain to be legitimately due to citizens of the United States for property belonging to them which had been improperly carried away from our territories after the peace. The claims allowed by the commissioners are believed not to have amounted in the aggregate to the total sum paid by Great Britain to the United States for the use of the persons entitled to indemnity under the first article of the treaty, as a balance of four thousand one hundred and twelve dollars and eighty-nine cents ($4,112 89) of that fund still remains in the treasury, as shewn by a communication from the Treasury Department, dated on the 9th of August, 1856.

There can be no doubt that the memorialist was entitled to be paid the value of the schooner "Speedwell," if she was his property in *1814, at the time of her* capture by the British, and if she was in the *waters of the United States* at the date of the exchange of the ratifi-

cations of the treaty of Ghent, which took place on the —— day of February, 1815.

The fact that the schooner Speedwell was captured by the British, in the Patuxent river, on the 22d of August, 1814, is shown by a letter from Lord Dudley, the English Secretary of State for Foreign Affairs, dated February 22, 1828, in reply to one from Mr. Lawrence, our secretary of legation in London, asking information with respect to the Speedwell; a copy of which letter, furnished to the memorialist from our State Department in 1850, is among the papers accompanying the memorial. In this letter from Lord Dudley, it is further stated that the Speedwell was taken into the British service and "employed in the Chesapeake for the conveyance of troops, stores, and provisions up the various rivers and creeks;" and that "she was afterwards employed by Sir Pulteney Malcolm as a tender to his Majesty's ship Royal Oak, bearing the admiral's flag," and that "Sir Pulteney Malcolm states that on his return to England the schooner Speedwell accompanied the ship under his command."

The object of the letter of Mr. Lawrence to Lord Dudley was to obtain information as to the position of the Speedwell at the time the ratifications of the treaty of Ghent were exchanged. Lord Dudley said in the letter just referred to, that there was not in the records of the navy office any log-book from the Speedwell, by which the situation of the vessel on the day mentioned by Mr. Lawrence could be ascertained; and that Sir Pulteney Malcolm had returned for answer to a reference made to him upon the subject, that although he was himself at anchor in the Royal Oak, off Mobile, in the Gulf of Mexico, on the 17th of February, 1815, he is unable to state positively that the Speedwell was in company on that day, as he had frequent occasion to detach that vessel on service. The facts mentioned by Lord Dudley go far to create a violent presumption that the Speedwell was in the waters and within the territorial jurisdiction of the United States on the 17th of February, 1815.

In addition to this evidence, there are on file among the papers accompanying the memorial, statements on oath, made by the memorialist on the 11th day of June, 1850, that he took the deposition of Major Archibald W. Hamilton, of the city of New York, in or about the month of August, 1828, in which he (Hamilton) stated, in effect, that he was a prisoner on board the schooner "Speedwell" on the 17th of February, 1815, and that it was then lying off Mobile, between Dauphin island and the main land; and that that deposition of Major Hamilton, and various other papers relating to his case, were on file in the Clerk's office of the House of Representatives, had been called for, and could not be found.

Taking all the facts into consideration, and giving them their full and proper weight, your committee are of opinion that there is evidence enough before them to establish, 1st, that the "Speedwell" was captured by the British in the Patuxent river on the 22d of August, 1814; and, 2d, that she was afterwards employed in the waters of the United States, in the service of the British government, during the remainder of the war, and did not leave or was not taken out of the waters of the United States until after the 17th of February, 1815;

and that the government of the United States ought now to pay the value of the "Speedwell" out of the fund paid into the treasury of the United States by Great Britain for the purpose of liquidating claims under the treaty of peace.

No written title to the schooner in favor of the memorialist is before us; but as his claim to indemnity for the schooner was preferred immediately after the peace, and it was placed on the list of the slaves and other private property for which the citizens of the United States claimed indemnification, prepared by the authority of the State Department, under the third article of the convention of the 12th of July, 1822, and was prosecuted before the board of commissioners appointed under the act approved March 2, 1827; and as the existence and loss of the written title to him has been stated, on oath, by the memorialist, your committee believe that the memorialist may with perfect propriety be regarded as its owner at this time, without requiring any further proof.

Your committee, therefore, report a bill for the relief of George W Biscoe, and recommend its passage.

TREASURY DEPARTMENT,
Comptroller's Office, January 22, 1857.

SIR: In regard to an inquiry in the latter part of your letter, 17th, respecting payments to certain persons whose names you gave for property lost under the 1st article of the treaty of Ghent, I send the information, so far as it has been ascertained to exist in this office, in a tabular statement, drawn up after much investigation, of the old public accounts. Permit me to invite your attention to the State Papers of the House of Representatives, 1st session, 19th Congress, vol. 6, Report No. 122.

Most sincerely yours,

ELISHA WHITTLESEY.

Hon. MILES TAYLOR,
House of Representatives.

List of names of certain persons claiming compensation under act of March 2, 1827, in reply to letter of Hon. Miles Taylor to the Comptroller, under date of January 17, 1857; same having reference to the first article of the treaty of Ghent.

Names.	Property.	Amount of estimated value as per report of Sec'y of State.	Amount paid at the treasury.
Benj. T. Fendall.....	For schooner Little Eliza.	$2,000 00	Nothing. On the 3d of April, 1828, Mr. Fendall was paid for slave property, by warrant No. 487, $1,050; and on June 4, 1828, by warrant No. 756, for one slave, $210
McFadden & Harris.	For sloop Chanco...	Nothing	Nothing.
Michael Tiernan.....	For schooner Caroline.	3,217 37	Paid on July 31, 1827, by warrant No. 9500, $1,582 96.
Robert Barrick.....	For schooner Independence.	4,000 00	Paid on April 22, 1828, by warrant No. 550, $3,000.
Blackwell Chilton....	For sloop Harriet...	600 00	Nothing.
John Dudley.....	Boat, anchor, and cable.	300 00	Nothing. On Dec. 24, 1827, Mr. Dudley was paid, by warrant No. 10038, for 13 slaves, $2,730; and on Sept. 13, by warrant No. 1222, $932 88. (Final dividends.)
Caleb Redman.....	For schooner Harriet.	700 00	Nothing.
Joel Thomas	For one vessel from 20 to 30 tons.	400 00	Nothing.
Cave & Richaud.....	For ship Victory....	8,000 00	$12,210 75, on December 17, 1827, by warrant No. 10005.
Jeremiah O'Brien & Gideon, for Wm. O'Brien & John Holway.	For schooner Washington.	1,500 00	Nothing.

DEPARTMENT OF STATE,
Washington, June 1, 1850.

SIR: I transmit to you herewith copies of papers relative to the capture and detention of the schooner Speedwell, of Nottingham, Maryland, requested in your note to this department of the 30th March last.

I am, sir, respectfully, your obedient servant,
JOHN M. CLAYTON.

GEO. W. BISCOE, Esq., *Washington, D. C.*

Mr. Lawrence to Lord Dudley.

16 LOWER SEYMOUR STREET,
February 8, 1828.

The undersigned, chargé d'affaires of the United States, has the honor to state to the Earl of Dudley, his Majesty's principal Secretary

of State for Foreign Affairs, that he has been instructed by his government to ascertain the date of the capture of the schooner Speedwell, of Nottingham, Prince George's county, Maryland, and to learn where this vessel was on the 17th of February, 1815. An extract from her log-book is desired to show at what period she was taken from the waters of the United States.

It is asserted that the Speedwell, of sixty-five tons burden, was captured during the invasion of Maryland, in 1814; that she was in the waters of the United States, on the southern coast, at the time of the conclusion of the war; but no mention of her appears in the British list of vessels submitted to the mixed commission under the convention concluded at St. Petersburg on the 12th of July, 1822.

The undersigned would observe that the sole object of the present respectful application to his Majesty's government is to procure information of importance in deciding on a claim now pending before the American commission, instituted for the purpose of distributing to those entitled thereto the sums paid by Great Britain to the United States, in pursuance of the convention of 13th November, 1826.

The undersigned, therefore, prays that Lord Dudley will have the goodness to cause to be procured from the proper department an answer to the inquiries which he has been directed to make; and he takes the liberty to add that, as the commissioners for whose use the information is desired will probably terminate their labors in the month of May next, it is desirable that he should have it in his power to make an early communication on the subject to Washington.

The undersigned requests Lord Dudley to accept the renewed assurances of his highest consideration.

W. B. LAWRENCE.

Right Hon. the EARL OF DUDLEY, *&c.*, *&c.*, *&c.*

Mr. Lawrence to Mr. Backhouse.

[Private.]

16 LOWER SEYMOUR STREET,
London, February 8, 1828.

DEAR SIR: I have just transmitted to Lord Dudley a note, on a subject respecting which I have been specially instructed.

I understand from America that the schooner Speedwell, to which it refers, is now employed in the West India service; and as there is a vessel on the Jamaica station of that name, mentioned in the navy list for January, 1828, page 65, I presume that it is the same. Should my conjecture be correct, it may tend to facilitate the acquisition of the information desired by my government. I have stated to Lord Dudley the reasons which make me wish an early reply, and the politeness which I have heretofore received from you induces me to bring the subject under your notice.

I have the honor to be, &c.,

W. B. LAWRENCE.

J. BACKHOUSE, *Esq.*, *&c.*, *&c.*, *Foreign Office.*

Lord Dudley to Mr. Lawrence.

FOREIGN OFFICE, *February* 22, 1828.

The undersigned, his Majesty's principal secretary of state for foreign affairs, has the honor to acknowledge the receipt of the note of Mr. Lawrence, chargé d'affaires from the United States of America at this court, of the 8th instant, requesting to be informed of the date of the capture of the American schooner Speedwell; and also where that vessel was on the 17th of February, 1815, at which time she was in the possession of his Majesty's forces.

The undersigned has referred Mr. Lawrence's note to the admiralty, with the view of procuring from that department the information requested by Mr. Lawrence.

It has appeared from this inquiry that the schooner Speedwell was captured on the 22d August, 1814, together with other vessels, in the Patuxent, and that she was shortly afterwards taken into his Majesty's service, and employed in the Chesapeake for the conveyance of troops, stores, and provisions, up the various rivers and creeks. She was afterwards employed by Sir Pulteney Malcolm as a tender to his Majesty's ship Royal Oak, bearing the admiral's flag; and Sir Pulteney Malcolm states that, on his return to England, the schooner Speedwell accompanied the ship under his command. Sir Pulteney Malcolm left Pensacola on the 7th of April, 1815, arrived at Havana on the 21st of April, and at Spithead on the 30th of May, of the same year.

There is not in the records of the navy office any log-book from the Speedwell, by which the situation of the vessel on the day mentioned by Mr. Lawrence can be ascertained; and Sir Pulteney Malcolm has returned for answer to a reference made to him upon the subject, that although he was himself at anchor in the Royal Oak, off Mobile, in the Gulf of Mexico, on the 17th of February, 1815, he is unable to state positively that the Speedwell was in company on that day, as he had frequent occasion to detach that vessel on service.

The undersigned regrets to be unable to return to Mr. Lawrence a more satisfactory answer to his note. He avails himself of this opportunity to renew to Mr. Lawrence the assurance of his high consideration.

DUDLEY.

WILLIAM BEACH LAWRENCE, Esq., *&c.*, *&c.*, *&c.*

HOUSE OF REPRESENTATIVES, *June* 13, 1850.

The undersigned being acquainted with General George W. Biscoe, lately of Prince George's county, Maryland, but now of the District of Columbia, take pleasure in stating that General Biscoe is a gentleman of unquestionable integrity and high character, in whose statements implicit reliance may be placed.

THOMAS G. PRATT,
RICH'D I. BOWIE.

TREASURY DEPARTMENT,
August 9, 1856.

SIR: For reply to your letter of the 8th instant, I have the honor to transmit herewith a letter from the Register of the Treasury, containing the information desired.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. MILES TAYLOR,
House of Representatives.

TREASURY DEPARTMENT,
Register's Office August 9, 1856.

SIR: In reply to the reference of the letter of Hon. Miles Taylor herewith returned, I have the honor to state that there was received from the British government, in the year 1827, the sum of one million two hundred and four thousand nine hundred and sixty dollars, ($1,204,960,) as an indemnity for slaves and other property carried away; which sum was appropriated, by the act of March 2, 1827, for the payment of such claims as might be admitted and adjusted by the commissioners appointed under said act.—(Statutes at Large, vol. 4, page 220, sec. 9.) Of this sum there is now in the treasury, undrawn, four thousand one hundred and twelve dollars and eighty-nine cents, ($4,112 89.)

I am, with great respect, your obedient servant,

F. BIGGER, *Register.*

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, August 7, 1856.

SIR: In reply to your note of the 4th instant, I have to inform you that a careful examination of the records of the proceedings of the board of commissioners under the 1st article of the treaty of Ghent has been made, and it appears that Mr. Biscoe's claim was allowed so far as the slave property was concerned, and the balance rejected.

The following is a copy of the record of the decision of the board:

"*August* 27, 1828.—Ordered, That the claim of George W. Biscoe, for George Biscoe, deceased, (No. 805 on the docket,) for property other than slaves, be rejected."

The name of W. L. Schmidt does not appear on the docket, either in connexion with this case or any other. In reply to your second and third questions, I have to say that the awards were paid at the treasury, upon the certificates of the clerk of the board of commissioners, and

that the payments were made under the 9th section of the act of March 2, 1827.—(United States Statutes at Large, vol. 4, p. 220.)

For an answer to your fourth question, relating to the present condition of the fund out of which the payments were made, you are respectfully referred to the Treasury Department.

I am, respectfully, your obedient servant,

J. A. THOMAS,
Assistant Secretary.

Hon. MILES TAYLOR,
House of Representatives.

DISTRICT OF COLUMBIA, *Washington County,* } *to wit:*

Be it remembered that on this 17th day of June, 1850, personally appeared George W. Biscoe, before me, the subscriber, a justice of the peace in and for the District and county aforesaid, and made oath that the schooner Speedwell (of Nottingham, Maryland,) which is named in the correspondence between W. B. Lawrence, esq., the United States chargé d'affaires at London, and the British government, was captured and carried away as stated in said correspondence, and that said schooner was a new vessel of sixty-five tons burden, and had been purchased at the price of two thousand dollars only a few weeks before her capture, as will appear from the definitive list of property now on file in the Department of State; and he further saith, that the bill of sale of said vessel from the original owner, together with two depositions of her capture by the enemy, and one deposition from Major Archibald W. Hamilton, (of the city of New York,) then a prisoner on board the schooner Speedwell, who made oath that this vessel was lying in the waters of the United States on the 17th day of February, 1815, on the coast of Alabama; and that the bill of sale from the original owner, together with all the papers and proofs above mentioned, are now lost or mislaid from the Clerk's office of the House of Representatives.

GEO. W. BISCOE.

Sworn to and subscribed the day and year above written, before me,
JAMES CALLAGHAN, *J. P.*

DISTRICT OF COLUMBIA, *County of Washington.*

On this 11th day of June, 1850, personally appeared before me, the subscriber, a justice of the peace, George W. Biscoe, of Nottingham, in Prince George's county, Maryland, and made oath on the Holy Evangely of Almighty God, that on or about the month of August, in the year 1828, he took the deposition of Major Archibald W. Hamilton, of the city of New York, to the effect that he was a prisoner to Sir Pulteney Malcolm, an admiral in the British na-

commander of his Majesty's ship "Royal Oak," then lying off Mobile, in the State of Alabama, on the 17th day of February, 1815, as appears from a letter of Lord Dudley to Mr. Lawrence, the United States chargé d'affaires at London; and that the said Major Archibald W. Hamilton stated in his deposition that he was then a prisoner on board the schooner Speedwell, lying between Dauphin island and the main land, and that said vessel was a tender to the admiral's ship, the "Royal Oak;" that the papers in relation to his case, including the deposition of Major Archibald W. Hamilton among them, were on file in the Clerk's office of the House of Representatives, and have been called for by the Hon. Richard I. Bowie, of Maryland, and cannot be found.

GEORGE W. BISCOE.

Sworn to and subscribed the day and year above written, before me,

JAMES CALLAGHAN, *J. P.*

The memorial of George W. Biscoe, of the State of Maryland, respectfully represents:

That in the year 1814, during the progress of the war with Great Britain, he owned a schooner, called the Speedwell, which he had recently purchased, being a new vessel, to trade between the port of Nottingham, upon the Patuxent river, and the port of Baltimore; and that when the British fleet entered the river in quest of Commodore Barney's flotilla, he removed her from Nottingham, where she was then lying, to a place of greater safety, some distance above, to a place called Mount Calvert, as far up as vessels of her class usually anchored; and that when Commodore Barney's flotilla were driven from their position, some forty or fifty miles below, the British fleet pursued him, and by that means were drawn to the immediate vicinity of his schooner, and captured and carried her away from the possession of your memorialist, and converted her into a tender to the British man-of-war Royal Oak, and used her as such, and took her to and anchored her off Mobile, where she was on the 17th of February, 1815, at which place she was lying at the time of the ratification of the treaty of peace, which fully appeared from the deposition of Major Archibald W. Hamilton, who testified that he was a prisoner on board the schooner Speedwell, sent there from on board the ship Royal Oak, and that the Speedwell was then, and had been for some time, lying between Dauphin island and the main land of Alabama, not far distant from said land.

Your petitioner states that this claim was before the commissioners under the treaty of Ghent, and Major Hamilton's deposition to the fact herein stated was on file with the papers in the Clerk's office of the House of Representatives, and has been called for by the Hon. Richard I. Bowie, and cannot be found. Your petitioner respectfully represents that, from all the evidence in this case, as set forth in the correspondence between our government and that of Great Britain, together with that of Major Hamilton, it is clearly shown that the

Speedwell was within the waters of the United States at the time of the ratification of the treaty of peace, and thereby bringing her within the first article of the treaty. Your petitioner further represents, that, as a large amount of money remains in the treasury, which was paid by the government of Great Britain for the purpose of liquidating claims arising under the first article of the treaty of Ghent, for captured property then remaining in the waters of the United States at the time of negotiating said treaty, your petitioner prays that, as his claim comes within the provisions of the treaty, he may be allowed for his property thus captured and taken away.

Your petitioner files herewith his deposition of the fact of the existence and loss of Major Hamilton's deposition and of the purport of it.

—

DISTRICT OF COLUMBIA, *County of Washington, ss.*

This thirtieth day of June, eighteen hundred and fifty, personally appeared before the subscriber, a justice of the peace in and for the county and district aforesaid, George W. Biscoe, who, being duly sworn, deposes and says that the above statement is just and true.

GEORGE W. BISCOE.

Sworn to and subscribed the day and year above written, before

JAMES CALLAGHAN, J. P.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 147.

JOSEPH GRAHAM.

[To accompany bill S. 333.]

JANUARY 24, 1857.

Mr. SHERMAN, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the memorial of Joseph Graham, have had the same under consideration, and submit the following report:

The committee concur with the report of the Committee of Foreign Relations of the Senate, made May 23, 1856, that the claimant is entitled to compensation as chargé d'affaires at Buenos Ayres during the absence of Mr. Pendleton, on a special mission to the republic of Paraguay and Uruguay, and after Mr. Pendleton's return home and before the arrival of Mr. Peden. But the Senate, while recognizing the justice of the claim, do not allow enough to cover the time of Mr. Pendleton's absence. Both the papers presented by the claimant and the report of the Senate show that the aggregate absence of Mr. Pendleton, from the 3d August, 1852, to October 20, 1854, when Mr. Peden, the successor of Mr. Pendleton, arrived at Buenos Ayres, was 11 months and 28 days, viz:

	Mos.	Days.
From August 3, 1852, to September 11, 1852 - -	1	7
From November 23, 1852, to March 26, 1853 - -	4	1
From March 31, 1854, to October 20, 1854 - -	6	20
	11	28

The claimant is therefore entitled to the sum of $4,470 60.

The attention of the committee has been called to the second memorial of the claimant, in which he asks for compensation for his services as *chargé at Buenos Ayres*, while Mr. Pendleton was at Parana, after Buenos Ayres had revolted from the Argentine Confederation. The claimant alleges that Mr. Pendleton refused to acknowledge Buenos Ayres as the government to which he was accredited, and that he was compelled to perform certain quasi diplomatic duties. Without inquiring *into the facts alleged* by Mr. Graham, your committee cannot *establish a precedent which* would authorize a consul to hold diplo-

matic intercourse with a foreign government not recognized by the United States, and especially with a revolting province then at war with its parent government, with which we were then holding diplomatic intercourse.

Your committee report the following amendment to Senate bill: Strike out the 8th and 9th lines, "sum of $2,254 25," and insert $4,479 60.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 148.

WILLIAM K. JENNINGS AND OTHERS.

[To accompany bill S. 259.]

JANUARY 24, 1857.

Mr. CLINGMAN, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred Senate bill No. 259, *which provides compensation to W. K. Jennings and Aphia Jennings, Henry A. Wise, Ann Robinson, Edward Rudd, and Mary Martin, for certain slaves taken and carried away by the British during the war of* 1812, *report:*

That they are satisfied, after a full examination of the evidence, that the parties have made good their claim to such portion of the unapplied residue of the funds obtained under the treaty of Ghent for this special purpose, and the committee therefore recommend the passage of said Senate bill, with an amendment suggested by the following circumstances, viz: That, inasmuch as there has been referred to this committee the memorial of Catharine Hodges, widow of Benjamin Hodges, of the State of Maryland, praying for compensation for the loss of a slave taken by the British during the late war, and inasmuch as the testimony is clear and satisfactory that the negro man, the property of the husband of said petitioner, was taken off by the British army on its return from Washington to the fleet, then lying in the Patuxent, the committee are of opinion that her case presents a just and equal claim to that of the others; and they, therefore, report the Senate bill back, amended accordingly, with the recommendation that it do pass.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 149.

OSCAR F. JOHNSTON.

[To accompany bill S. 257.]

JANUARY 24, 1857.

Mr. BENSON, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred Senate bill No. 257, "An act for the relief of Oscar F. Johnston, a passed midshipman in the United States navy," have had the same under consideration and report:

That the facts in this case are succinctly stated in the Senate report, viz: That they find the petitioner entered the naval service as an acting midshipman in 1846; that his warrant as a passed midshipman bears date June 8, 1852; but that, owing to his absence from the United States *on duty*, his examination could not take place until June 8, 1853. That, in consequence thereof, the department decided, on June 9, 1853, (which decision was sustained by the Attorney General,) that the memorialist could only be paid as a passed midshipman from the *date* of his examination. The committee are of the opinion that the memorialist is clearly entitled to the pay of a midshipman from the date of his warrant, and accordingly report a bill for his relief.

The committee report back the bill without amendment, and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 150.

EDWARD MATTINGLY.

JANUARY 30, 1857.—Ordered to be printed.

Mr. KNOWLTON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Edward Mattingly, praying for additional compensation for his services as inspector of customs at Georgetown, D. C., have had the same under consideration, and report:

That the evidence in this case fails to substantiate the claim. The letter of Hon. James Guthrie, Secretary of the Treasury, dated November 14, 1854, and directed to Mr. Mattingly, stating both the law and the usage of the department under it, is conclusive, in the estimation of your committee, showing as it does that the petitioner has no further claim upon the government for his services as inspector of the customs at said port.

4TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT. No. 151.

ELEANOR GARDINER.

JANUARY 30, 1857.—Ordered to be printed.

Mr. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of Mrs. Eleanor Gardiner, widow of Henry Gardiner, with the papers accompanying it, have had the same under consideration, and report:

The claim is for the value of the dwelling house and barn alleged o have been destroyed by the British in the war of 1812, upon the arm of her husband, St. Charles's county, in the State of Maryland.

It is alleged that the battle of St. Leonard's creek was fought upon the farm of Mr. Gardiner, in 1814, and that regular soldiers of the United States and militia were stationed on a portion of the farm, and that this fact occasioned the battle. In the deposition of Samuel Turner, taken in 1836, he states that he was quartermaster or deputy quartermaster of the militia in 1814; that the militia *were encamped a short distance from the farm;* that the farm *was visited* by the militia for the purpose of reconnoitring and viewing the enemy; and that some few days after the arrival of the British vessels at the mouth of the St. Leonard's creek, the buildings on the farm were destroyed. He further states that the battle of St. Leonard's creek, fought by the United States troops, was fought on this farm.

There is nothing whatever to show that the buildings in question were ever occupied for military purposes, or that their destruction was a consequence of their having had a military character imparted o them at any time; and your committee, therefore, respectfully recommend, for the reasons given in their report on the case of Rinaldo Johnson and Ann E. Johnson, that the claim of the memorialist be rejected.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 152.

JAMES E. KILGOUR, EXECUTOR OF WILLIAM KILGOUR.

JANUARY 30, 1857.—Ordered to be printed.

Mr. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of James E. Kilgonr, executor of William Kilgour, deceased, with the accompanying papers, have had the same under consideration, and report:

The claim of the memorialist is for compensation for buildings and moveable property destroyed by the enemy in the war of 1812 on the plantation of the late William Kilgour, situated on the Patuxent river, in the State of Maryland, and which extended back some two miles from the river. The property alleged to have been destroyed consisted of two large barns, tobacco, wheat, a carriage, bacon, *many head of cattle, &c.* The memorial is exceedingly vague in every respect. It does not state the quantities of the various moveables destroyed, in what particular buildings they were contained, nor at what point on the plantation these moveables were at the time of their destruction, or at what particular point on it the buildings destroyed were placed. There is nothing in the memorial which asserts in direct terms that the buildings destroyed were actually occupied by the military forces of the United States by order of an agent of the government, or of their commanding officer, at the time of their destruction, or that the moveables in question were made use of, detained, or in any way employed by the military forces at the time; but there is much in it which gives rise to the contrary belief.

The statements contained in the depositions filed in support of the claim are as vague and indefinite as the memorial. *Ex parte* depositions are at all times a kind of evidence entitled to no great weight, unless they bear upon specific facts of such a character, and are made at such a time that the persons giving them may be convicted of perjury if they are false. The depositions filed in this case, as well as in others of a similar description, are not of a character to give rise to convictions in favor of the claims preferred. In the first place they were taken at such periods after the occurrences to which they purport to refer, that there would naturally be great room for error growing out of the lapse of time, and the treacheries of memory; and in the next place the statements are so general and indefinite, that if they had been made the very day after the occurrences referred, and could

be relied on implicitly, still all the statements contained in them might be true, and yet no shadow of foundation be laid for a claim against the government in conformity to the spirit of the acts of 1816, 1818, and 1825.

The plantation of Mr. Kilgour was large. Captain Woodburn, in his deposition, speaks vaguely of the occupation of the premises—not the buildings, &c. This would be true, if the forces of the United States marched upon any portion of it and halted. George H. Aloy, (No. 4,) who resided on the farm, speaks of the destruction, but does not say a word of any military occupation by the United States. The testimony of John Long, (No. 5,) who was a militiaman, is quite confused; but the conclusion to be derived from it is, that the British were in possession of the premises, and that the Americans advanced thereon; not that there was any occupation of any of the buildings, &c., that would bring them within the principle of the act of 1816, and the acts amendatory of it. George N. Alvey (No. 10) says, that in 1814 Captain Kilgour moved his tobacco and other property *from the barns on* the waters of the Patuxent to a remote part of his land, and put them in other barns of his about two miles from the river.

The statements contained in all the depositions are confused both as to the position of the buildings and property destroyed and of the militia; but it seems clear from the whole tenor, first, that the militia which opposed the landing of the British, if there were any there to make opposition to it, were near the Patuxent river, and that they did not occupy the buildings on the plantation at the time.

2. That the orders said to have been given by the commanding general to attack the British were given after the British were in possession of the buildings, (Nos. 5 and 6.)

3. That the tobacco and other property destroyed were at some considerable distance from the scene of the contest, and from that part of the plantation where the buildings were situated, in which some of the witnesses say that the baggage, &c., of some of the militiamen were at times deposited.

4. That there never was at any time any occupation of any buildings, on the plantation, *by an organized military force*, by authority of an agent or officer of the government, of a kind to impart to them or any of them a military character, and your committee, for the reasons assigned in the case of Rinaldo Johnson and Ann E. Johnson, therefore recommend that the claim of the memorialist be rejected.

Memorial of James E. Kilgour, executor of William Kilgour, deceased.

To the honorable Senate and House of Representatives of the United States:

The memorial of James E. Kilgour, executor, &c., of William Kilgour, deceased, late of the county of St. Mary's and State of Maryland, respectfully represents and showeth: That the father of your petitioner, William Kilgour, deceased, prior to and during the last war with Great Britain, was a planter in very comfortable and independent circumstances, in the said State of Maryland. That the said

Kilgour resided upon or near the Patuxent river, and his plantation and woodland extended back for the distance of two miles or more from said river.

The said William Kilgour, in the early part of said war, was actively engaged as a partisan, and served for a part of the time as captain of the State militia of Maryland.

That during the year 1814, this section of country became the active seat of war, in consequence of the British appearing in the waters of the Patuxent, with a considerable fleet and force.

That the whole military defence, consisting chiefly of the Maryland State militia, under the command of Brigadier General Philip Stewart, was, during this period of, threatened, and actual invasion rendezvoused in the counties of St. Mary's and Charles; that the premises and buildings of William Kilgour, as will be seen from the papers accompanying this memorial, were frequently and commonly used for purposes of depot and quarters by order of commanding officers; that the barns and other buildings of said William Kilgour (where his tobacco and other valuable property was situated) were commonly used by the said troops of the said command of General Stewart to deposit their arms, ammunition, baggage, &c.

Your memorialist further represents and shows that the British forces did land, march through the premises of said Kilgour, burn and destroy a great deal of valuable property, and taking with them much more.

Your memorialist further shows that the very day the British landed and destroyed this valuable property, including two large barns, tobacco, one carriage, wheat, bacon, and many head of cattle, &c., that the advance guard of Captain Hungerford's company, of Charles county, was ordered to the premises of said William Kilgour, which they did, and occupied with two field pieces; that shortly thereafter the enemy landed, the American troops retreated, and the enemy proceeded to burn, pillage, and destroy.

Your memorialist also shows that a short time before the enemy landed to destroy and pillage as aforesaid, an American officer in command of the baggage wagon, &c., was upon said premises. No one can entertain a doubt that the property was destroyed by the British, in consequence of the occupation and use of said buildings and premises by the American forces, duly ordered there.

Your memorialist asks that a proper bill be passed for his relief as the legal representative of said William Kilgour, deceased, directing the Secretary of the Treasury to ascertain the extent and value of the buildings and property destroyed and carried away by British troops during the late war, and to pay the amount thereof.

Your memorialist further represents that this form of prayer and application is made to conform to the precedent in a case precisely similar, passed at the last Congress, (chap. 180.) That the said William Kilgour and James F. Sothoron lived on adjoining plantations, and the property was destroyed under the same circumstances identically.

And your memorialist will ever pray, &c.

JAMES KILGOUR,
Executor, &c.

No. 1.

Deposition of Captain William Woodburn.

STATE OF MARYLAND, *St. Mary's county, to wit:*

Be it remembered that on this twenty-fourth day of January, eighteen hundred and fifty, before me, the subscriber, a justice of the peace of the State and county aforesaid, personally appears William Woodburn, and makes oath on the Holy Evangely of Almighty God, that he held a captain's commission during the late war with England, and commanded the third company of the first battalion of the forty-fifth regiment of Maryland militia; that in the month of July, eighteen hundred and fourrteen, then under the orders of Major John Chappelear, who commanded said battalion, he did occupy the premises of William Kilgour, of St. Mary's county, Maryland, before, and on the very day that the British forces landed and marched up to said premises, drove him off, took possession of said premises, and burnt and destroyed barns, wheat and tobacco, and carried off other property, to wit: cattle, sheep, bacon, sine, and various other articles not recollected; That he was near being captured and driven off by a superior force; he retreated from thence near the main body of the American forces, which occupied a position not far distant, and soon after reaching there I saw the flames which issued from the barns then on fire.

In testimony whereof, the said William Woodburn hath hereunto subscribed his name.

WILLIAM WOODBURN.

Sworn to and subscribed before me, on the day and year herein before written.

H. FOWLER,
Justice of the Peace for St. Mary's county, Md.

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MARYLAND, *St. Mary's county, to wit:*

I hereby certify that H. Fowler, gentleman, before whom the aforegoing affidavit appears to have been made, and who hath thereto subscribed his name, was, at the time of so doing, and still is, a justice of the peace of the State of Maryland, in and for St. Mary's county aforesaid, duly commissioned and sworn; and that to all acts by him done in that capacity full faith and credit are due and ought to be given, as well in courts of justice as thereout.

In testimony whereof, I have set my hand and affixed my seal this [L. S.] twenty-ninth day of January, 1850.

WILLIAM T. MADDOX,
Clerk St. Mary's county court.

No. 2.

Deposition of George Holly.

STATE OF MARYLAND, } *to wit:*
St. Mary's county, }

Be it remembered that on this sixth day of August, 1849, before me, the subscriber, a justice of the peace of the State and county aforesaid, personally appears George Holly, who makes oath on the Holy Evangely of Almighty God that he was a joint tenant of a part of a tract of land belonging to William Kilgour, when his, the said Kilgour's, property was burned and destroyed by the British, in the year 1814, and that he saw General Stewart and suite (American officers) occupy the said premises belonging to the said Kilgour a few days previous to the landing of the British, at which time and place they burned and destroyed the said Kilgour's property. And he, the said deponent, further says, that he conducted General Stewart from the premises aforesaid across to Captain James F. Sothoron's, where he could get a view of the British fleet, then occupying the Patuxent river.

Sworn to before

H. MATTINGLY, of Jno.,
Justice of the Peace for St. Mary's county.

ST. MARY'S COUNTY, *to wit:*

I hereby certify that Henry Mattingly, of John, gentleman, before whom the within deposition appears to have been taken and made, was, at the time thereof, and still is, one of the justices of the peace of the State of Maryland in and for St. Mary's county aforesaid, duly commissioned and qualified, and that to all whose acts as such due faith and credit are due and ought to be given, as well in courts of justice as thereout.

In testimony whereof I have hereunto set my hand and affixed the [L. S.] seal of my office, this fourth day of December, 1849.

W. T. MADDOX,
Clerk St. Mary's county court.

No. 3.

Deposition of Colonel B. J. Heard.

STATE OF MARYLAND, } *sct:*
St. Mary's county, }

Be it known that on this fifth day of December, in the year of our Lord one thousand eight hundred and forty-nine, before me, the sub-

scriber, one of the justices of the peace of the State of Maryland in and for said county, personally appears Colonel Benedict J. Heard, who, after being duly sworn according to law, deposes and says: That he was adjutant of the Maryland militia, in the 45th regiment, in the year 1814, up to about the first of August; and that, while he was adjutant in said regiment, General Philip Stewart was brigadier general and commander-in-chief of that portion of the American forces on duty in Charles and St. Mary's counties, in the State of Maryland, and that John Chappelear was a major in the 45th regiment on or about that year.

Sworn before

JO. SPALDING.

STATE OF MARYLAND, } *to wit:*
St. Mary's county, }

I hereby certify that Joseph Spalding, gentleman, before whom the aforegoing deposition appears to have been made, and who hath thereto subscribed his name, was at the time of so doing, and still is, a justice of the peace of the State of Maryland in and for St. Mary's county aforesaid, duly commissioned and sworn; and that to all acts by him, done in that capacity, full faith and credit are due and ought to be given, as well in courts of justice as thereout.

In testimony whereof, I hereunto set my hand and affix the seal of my office, this sixth day of December, eighteen hundred and forty-nine.

[L. S.]

WM. T. MADDOX, *J. P.*

No. 4.

Deposition of George N. Alvey.

I, the undersigned, do hereby certify, that in the year eighteen hundred and fourteen I resided on a farm belonging to Captain William Kilgour, and on the said farm there was a good dwelling house, two large barns, meat house, dairy, and many other convenient outhouses, and in the barns there was deposited between thirty and forty hogsheads of tobacco prized, and some several bulks of unprized tobacco; also, a large crop of wheat in the straw, and a crop of rye in the same, together with all the farming implements; and that some time in July, in the year aforesaid, the British army marched to the said farm, about nine o'clock in the morning, and first entered the dwelling-house, and commenced searching in every place, unlocking every drawer and closet, and rifling them of their contents, even female clothing not excepted; from thence to the meat house, and took a large quantity of bacon, lard, &c., and carried it away; then to the dairy, where their conduct exceeded anything in the annals of

history—drinking milk and committing the greatest waste of every kind; again they entered the dwelling, where they found a large box of soap and a new man's saddle, which they took and carried off without any hesitation; and then they proceeded to the barns, where they found a new seine and rope and a single-wheel carriage, which they took and carried away also; they continued their unwarrantable conduct in this manner—searching, plundering, tearing off the weather-boarding of the corn-house, catching poultry of every description, which they carried off—until about two o'clock in the evening, bidding all farewell; taking care to set both barns on fire, and staying around them to see that they and their contents were entirely consumed

In testimony whereof, I do hereby set my hand, this twenty-sixth day of January, in the year of our Lord eighteen hundred and fifty.

GEO. N. ALVEY.

Sworn and subscribed before me on the day and year above written.

H. MATTINGLY, OF JNO.,
Justice of the Peace in and for St. Mary's county, Md.

STATE OF MARYLAND, } *to wit:*
St. Mary's county, }

I hereby certify that H. Mattingly, of Jno., gentleman, before whom the aforegoing affidavit appears to have been made, and who hath thereto subscribed his name, was at the time of so doing, and still is, a justice of the peace of the State of Maryland in and for St. Mary's county aforesaid, duly commissioned and sworn; and that to all acts by him done in that capacity full faith and credit are due and ought to be given, as well in courts of justice as thereout.

In testimony whereof, I have set my hand and affixed the seal of my office, this twenty-ninth day of January, eighteen hundred and fifty. [L. S.]

WM. T. MADDOX,
Clerk St. Mary's county court.

No. 5.

Deposition of John Long.

STATE OF MARYLAND, *Charles county, to wit:*

I hereby certify that during the late war between the United States and Great Britain, in the year 1814, I was a private soldier in Captain John Briscoe's company of Maryland militia, under the command of General Philip Stewart. We did use and occupy the premises and buildings of William Kilgour when his property was burnt and destroyed, and by order of General Philip Stewart, both before and after

the burning and destroying in July; and on the very day said William Kilgour's property was burnt and destroyed, General Philip Stewart did order the officers and soldiers under his command to march down on said Kilgour's premises and attack the enemy. We did march down, as ordered, with our General Philip Stewart, to the aforesaid Kilgour's premises, and in the very act of charging on them, when the general was met by a man and informed the British force was superior in number; and it was then that General Stewart ordered us to fall back. I further state, that the British destroyed everything that William Kilgour had, that a destroying and plundering army could, except the land on which William Kilgour lived, and left William Kilgour without the common necessaries of life, that is to say, for food and raiment. In a word, I cannot express anything worse than the depredations committed by the British. I further saith the balls they fired at the houses I found in the fields of said Kilgour. I will further state, that William Kilgour had burnt and destroyed about forty thousand pounds of tobacco and barns, &c., destroyed and carried off all manner of stock and poultry, and in August carried off all kinds of fruit and corn crop, and garden vegetables; left him some fodder, but no corn.

In testimony, I have hereunto signed my name, this 22d day of February, 1850.

JOHN LONG.

—

STATE OF MARYLAND, *Charles county, to wit:*

On this 22d day of February, 1850, before me, the subscriber, a justice of the peace in and for the State and county aforesaid, personally appeared John Long, and made oath upon the Holy Evangely of Almighty God that the foregoing statement is bona fide true, as therein set forth, to the best of his knowledge and belief.

Sworn before

ELIJAH W. DAY, *J. P.*

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STATE OF MARYLAND, *Charles county, to wit;*

I hereby certify that Elijah W. Day, esquire, before whom the aforegoing affidavit appears to have been made, and who has thereto subscribed his name, was at the time of so doing, and still is, a justice of the peace of the State of Maryland, in and for Charles county aforesaid, duly commissioned and qualified.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of Charles county court, this twenty-second day of February, in the year of our Lord eighteen hundred and fifty. [L. S.]

RICHARD H. MITCHELL,
Clerk Charles *county court.*

No. 6.

Affidavit of John Alvey, in case of William Kilgour's claim.

STATE OF MARYLAND, } *to wit:*
St. Mary's county.

Be it remembered that on this seventeenth day of January, 1837, before me, the subscriber, a justice of the peace of the State and county aforesaid, personally appears John Alvey, and made oath on the Holy Evangely of Almighty God that he was, during the late war, in eighteen hundred and fourteen, between the United States and Great Britain, a soldier in Captain John Briscoe's company, of the forty-fifth regiment of the Maryland militia; that he, together with other soldiers of the American forces, were in the habit of rendezvousing in the houses on the premises of Captain William Kilgour, where his barns, tobacco, and other property was burnt and destroyed by the British forces; that he, together with others, were in a habit of depositing their guns, arms, and ammunition in the houses of the aforesaid premises; that he did aid in depositing straw and other forage in the barns aforesaid for the use of some of the American forces, which contained Captain William Kilgour's tobacco and other property; that the British did march up to the said houses, set fire to the said forage, burning the same, together with the barns, tobacco, &c.; he further deposeth and sayeth, that he verily believeth that had not the baggage and other property which belonged to some of the American forces been deposited and left in the houses, his, Kilgour's, barns would not have been burnt by the British forces; deponent further stateth, that he was in the habit of leaving some of his clothing and other baggage in the houses on the premises when ordered off, and on the very day that the aforesaid property was burnt and destroyed some of his clothing and other baggage was left in the houses on the aforesaid premises, whilst he was on the heights on duty close by when the destruction took place; the deponent further sayeth, that he was taken sick a short time thereafter, and returned to the dwelling on the aforesaid premises; lying one day in the said dwelling, suddenly an English soldier came to the house, and asked the deponent a great many questions—where they (the American forces) were all at the day we burnt this property, that you did not meet us here, &c.; he, the deponent, told him we were getting here as fast as we could, but you happened to get ahead of us on your way back to your boats. I, the deponent, told the English soldier so, although General Stewart had ordered us to retreat.

Sworn before GEORGE SLYE. [SEAL.]

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MARYLAND, } *to wit:*
St. Mary's county.

I hereby certify that George Slye, gentleman, who appears to have *taken and signed the above* deposition, was at the time of the taking *and signing thereof,* and still is, one of the justices of the peace of the

State of Maryland in and for Saint Mary's county aforesaid, duly commissioned and qualified, and that to all acts by him done in that capacity full faith and credit are and ought to be given, as well in courts of justice as thereout.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, this third day of February, in the year of our Lord eighteen hundred and thirty-seven. [L. S.]

JO. HARRIS,
Clerk St. Mary's county court.

No. 7.

Deposition of John B. Harris.

STATE OF MARYLAND, } *to wit:*
St. Mary's county, }

Be it remembered that on this twenty-eighth day of January, eighteen hundred and fifty, before me, the subscriber, one of the justices of the peace in and for the State and county aforesaid, personally appeared John Harris, he being duly sworn on the Holy Evangely of Almighty God, deposeth and says: That he was a private soldier in the company of Captain James F. Sothoron, in the Maryland militia commanded by General Philip Stewart, in the year eighteen hundred and fourteen; that he had frequently occupied the premises belonging to Captain William Kilgour, and while there they had no tents at all, but had to occupy the houses instead of tents; the deponent further states that he was frequently on the premises after the British burned and destroyed his barns and tobacco, wheat and other property, carried off his stock, to wit: cattle and sheep, and poultry of every description, one new seine and rope, household and kitchen furniture to a considerable amount, together with four young negro men; deponent further states that he was on the farm, after the British went away, frequently during that fall, and saw a vast destruction of property, both real and personal. In a word, he, the said William Kilgour, was literally swept out by the enemy.

In testimony whereof, I, the said John Harris, hath hereunto subscribed my name, the day and date hereinbefore written.

JOHN B. HARRIS.

Subscribed and sworn to before me the day and year hereinbefore written.

GEO. N. ALVEY,
Justice of the Peace in and for St. Mary's Co., Md.

No. 8.

Deposition of Leonard Woodburn.

STATE OF MARYLAND, } *to wit:*
St. Mary's county,

Be it remembered that on this twenty-sixth day of January, eighteen hundred and fifty, personally appeared before me, the subscriber, one of the justices of the peace in and for the State and county aforesaid, Leonard Woodburn, who being duly sworn on the Holy Evangely of Almighty God, deposeth and says: That he was a private soldier in Captain John Briscoe's company of Maryland militia, under General Philip Stewart; that they occupied a position not far distant from where the British landed in the year eighteen hundred and fourteen, some time in July, marched up to the farm belonging to Captain William Kilgour, where they set fire to two barns containing about forty thousand pounds of tobacco, wheat, and many other articles, not recollected, carrying away with them bacon, stock, to wit: cattle, sheep, and poultry of every description, one new seine and rope, and household and kitchen furniture to a considerable amount, wearing apparel, &c.; the deponant further states that he had, previous to and after the destruction of the aforesaid property, frequently occupied the premises of the aforesaid Kilgour, and that it was a place of general rendezvous for a portion of the militia soldiers, and that they had no tents.

In testimony whereof, the aforesaid Leonard Woodburn hath hereunto subscribed his name.

LEONARD WOODBURN.

Sworn to and subscribed before me on the day and year hereinbefore written.

GEO. N. ALVEY,
Justice of the Peace in and for St. Mary's Co., Md.

No. 9.

Certificate of James Burroughs.

I, the undersigned, do hereby certify that in the year 1814, during the war between the United States and Great Britain, I was a private soldier in Captain Philip Melton's company of the 45th regiment of Maryland militia, under the command of General Philip Stewart, who commanded the brigade; that during the time I was in service, I was on the premises where William Kilgour's property was removed to, both before and after the British destroyed the same; that when we were there we occupied the houses on said premises belonging to the said William Kilgour, as we had no tents to protect us from the weather. I further certify that I was on the said premises the very day that the British burnt his two barns containing a large quantity of tobacco, say about forty thousand pounds, and wheat and other property which the barns contained, and plundered and nearly de-

stroyed dwelling and other out-houses; carrying away every article of food that they could get, driving before them all the stock they could find, committing all manner of destruction to everything—such as fruit trees, garden vegetables, all kinds of poultry, or anything which a plundering army could come in contact with; carried off said Kilgour's negroes; took him prisoner on the route; went down to their barges, and soon commenced firing their twelve-pound shot at the houses on the river. I further certify that after they were gone, that I was on said Kilgour's premises, and saw some of the family, who are now dead, and heard them say that the British *said* that they came for the *express purpose of destroying* everything that Captain W. Kilgour had in the world; that he kept up a camp on his land, and had done everything in his power to prolong the war, and had loaned the government a great deal of money to carry on the war; the admiral had been informed two weeks ago of his rendezvous and depot, and they came for the express purpose of destroying everything that William Kilgour had in the world, and they done so.

In testimony whereof, I do hereunto set my hand and seal this twenty-eighth day of January, in the year of our Lord eighteen hundred and fifty. [L. S.]

JAMES BURROUGHS.

Subscribed and sworn to before the subscriber this 28th day of January, 1850.

GEORGE N. ALVEY,
Justice of the Peace in and for St. Mary's Co., Md.

STATE OF MARYLAND, *St. Mary's county,* } *to wit:*

I hereby certify that George N. Alvey, before whom the aforegoing affidavits appear to have been made, and who hath thereto subscribed his name, was, at the time of so doing, and still is, a justice of the peace of the State of Maryland in and for St. Mary's county aforesaid, duly commissioned and sworn, and that to all acts by him done full faith and credit are due and ought to be given, as well in courts of justice as thereout.

In testimony whereof, I have hereunto set my hand and affixed the seal of St. Mary's county court, this twenty-ninth day of January, eighteen hundred and fifty. [L. S.]

W. T. MADDOX,
Clerk of St. Mary's county court.

No. 10.

Certificates of George N. Alvey and Charles Gill, in case of Kilgour.

STATE OF MARYLAND, *St. Mary's county,* } *to wit:*

Be it remembered that on this 26th day of July, 1837, before me, the subscriber, a justice of the peace of the State and county aforesaid,

personally appears George N. Alvey, who being sworn on the Holy Evangely of Almighty God, deposeth and saith: That in the year 1814 Captain William Kilgour moved his tobacco and other property from his barns on the waters of the Patuxent to a remote part of his land, a distance of two miles from the Patuxent river, and deposited the same in barns belonging to said Kilgour—when the English did land, march up and burn the same; the deponent further saith, that it was impossible for the said Kilgour to remove the said property from the time the British landed until the time they destroyed the same, which did not exceed eight hours; the deponent further saith, that he was on the said premises a short time before the said Kilgour's property was destroyed, and saw an American officer, who said he had the command of the baggage wagon, and had ordered it there that night, to the said Kilgour's premises.

Sworn to before H. FOWLER.

At the same time, personally appears Charles Gill, of Charles county, who deposeth and saith: That he was in the militia service in the year 1814, under the command of General Stewart, who ordered him, the said Gill, with others, to the number of two or three hundred, to the premises of Captain William Kilgour, on the same day his barns were destroyed by the British forces.

Sworn to before H. FOWLER.

St. Mary's county, *to wit:*

I hereby certify that Henry Fowler, gentleman, before whom the aforegoing depositions were taken and signed, was at the time, and still is, one of the justices of the peace of the State of Maryland for St. Mary's county aforesaid, duly commissioned and qualified, and that to all whose acts, as such, due faith and credit are and ought to be given, as well in courts of justice as thereout.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, this twenty-seventh day of July, eighteen hundred and thirty-seven. [L. S.]

JO. HARRIS,
Clerk St. Mary's county court.

State of Maryland, }
St. Mary's county, } *to wit:*

Be it remembered, that on this 28th day of July, 1837, before me, the subscriber, a justice of the peace of the State and for the county aforesaid, personally appears Charles Gill, who being sworn on the Holy Evangely of Almighty God, that he was the second man in the advance guard of Captain John Hungerford's company of Charles county, commanded by General Stewart, during the late war between the United States and Great Britain, (to wit, in the year 1814;) that the advance guard was ordered to Captain William Kilgour's premises, with two field pieces, when they did advance and occupy the

same for a short time, with orders if they should meet the enemy, to fire on them; that after occupying the same as ordered by the principal officer in command, they retreated; and on the same day the enemy burnt and destroyed the barns and tobacco belonging to the aforesaid William Kilgour.

Sworn before H. FOWLER.

Deposition of Jane Wood.

STATE OF MARYLAND, *St, Mary's county, to wit:*

Be it remembered, that on this fifth day of February, in the year of our Lord eighteen hundred and fifty, before me, the subscriber, one of the justices of the peace in and for the State and county aforesaid, personally appeared Mrs. Jane Wood, who, being duly sworn on the Holy Evangely of Almighty God, deposeth and saith: That some time in July, in the year eighteen hundred and fourteen, she was on the premises belonging to Captain William Kilgour on the very day that the British army landed and marched up to the said premises, it being about nine o'clock in the morning when they reached the said premises. On their approach the American forces retreated, leaving behind some several ladies to protect or shift for themselves. The enemy came to the house, where the ladies met them in the yard with a flag. The British officers told them to retreat; that they should not be hurt. That they had come on shore for the express purpose of destroying or carrying away the tobacco, stores, and all other property belonging to Captain William Kilgour that was at this rendezvous. The deponent states that they went to work and searched every trunk, drawer, and closet belonging to the dwelling-house, plundering and taking away every article which they might fancy, repeatedly declaring that they intended to destroy every article of property that belonged to Kilgour on the premises; they entered the meat house and dairy and took from thence a large quantity of bacon, lard, &c. The deponent further states that they took from the dwelling house a new man's saddle, and a number of articles not recollected, even female clothing not excepted. They continued their searching and plundering, catching poultry, and tearing the weather-boarding off the corn house, until about two o'clock in the evening, when they proceeded to the barns, where there was from thirty to forty hogsheads of tobacco, a large crop of wheat and rye in the straw, a seine and rope, a single wheel carriage, and many other implements belonging to the farm, which they set on fire and consumed the whole, with the exception of the seine and rope and carriage, which they took and carried away with them. The deponent further states that after all this destruction of property as aforesaid, they marched down to their barges, carrying with them various kinds of stock, poultry, &c., and embarked for their shipping, firing several round shot at Kilgour's house, which fortunately did not take effect, the balls passing over the top of the house.

The deponent further states that, in a word, they literally ruined Captain William Kilgour as regards property, leaving him and family in a state of indigence and poverty, even being beholding to his neighbors for the common necessaries of life.

In testimony whereof, the said deponent hath hereunto subscribed her name the day and year hereinbefore written.

JANE WOOD.

Sworn and subscribed to before me, the subscriber, on the day and year hereinbefore written.

GEORGE N. ALVEY,
Justice of the Peace in and for St. Mary's Co., Md.

Deposition of James E. Kilgour.

STATE OF MARYLAND, } *to wit:*
St. Mary's county, }

On this fifth day of March, in the year of our Lord 1850, personally appeared before me, the subscriber, one of the justices of the peace of the State of Maryland, in and for St. Mary's county aforesaid, James E. Kilgour, executor of William Kilgour, deceased, and made oath in due form of law that the facts and statements contained in his memorial to the Congress of the United States for compensation for property destroyed by the British, in 1814, belonging to his father, William Kilgour, deceased, are, as he verily believes, true; that many years ago, to wit: 1836–1837, he presented a memorial to Congress for compensation, as aforesaid, and entrusted the attention of his said claim to Daniel Jenifer; then, in July, 1837, placed it in the hands of the Hon. Fras. S. Key, who informed me, when I called on him, in 1840, that I had established the claim on the same basis that other claims had been allowed by goverment—all he was waiting for was an action of the government—and he expected that the government would appoint a board of commissioners to investigate the private claims. In that situation I rested satisfied, supposing the case still pending before the government; when it was reached I have no recollection of receiving any information on the subject from Mr. Key from the time aforesaid during his life, as I was not in Washington city from March, 1841, till January, 1850. Affiant further states, that he was not informed of any report being made on the subject by any committee. In 1846 he wrote to the executors of Fras. S. Key to ascertain what had become of the papers and proof in that case, not knowing who the executor was at the time. I soon after received a letter from Phil. B. Key, stating he was the executor of his father, and if it met with my approbation he would search up the papers and proofs, and attend to the case for me. I authorized him to do so. Some time about 1848, I received a letter, signed Addison & Tucker, stating that the papers and proofs aforesaid had been placed into their hand by Phil. B. Key, and, if it met with my approbation, they

would prosecute the said claim against the government for one half. I refused to reply; but ordered the representative in Congress from this district to take charge of the papers, as they had fallen into the hands of strangers, and prosecute the claim. He wrote me many letters on the subject, and I expected every session of Congress that he would have prosecuted the claim with success.

The affiant further states, that he sent word to the said representative, by his son, to inform him what had become of his papers and proofs in the year 1849? His answer was, "They were in the Clerk's office in Washington." In that state of the case he went up to Washington early in January, 1850, to look after the business, and after searching both Clerk's and Secretary's offices, he was astonished to find no papers on file, or had been since the year 1846; and that after twelve or fourteen days of perplexed and anxious search, he was enabled, in an attorney's office in the city, to find three depositions only, taken in or about 1837, which are filed with the present application; many more he has not been able to find, but are lost; many of the deponents have died since their depositions had been taken, some others are living, and of these he has endeavored to have them restated, together with, perhaps, five or six additional depositions. Affiant makes this sworn statement because he is advised that it is desired to be known why this claim has been so long delayed from being made after proof taken, and to account for the different dates of the depositions.

Affiant will here state that he omitted to mention in his memorial that the four negroes mentioned in the depositions as having been carried away by the British at the same time that the tobacco, barns, and other property was destroyed or removed, were proven and paid two hundred and eighty dollars for each by the commissioners, which awarded payment for the negroes carried away by the British, as provided for under the first article of the treaty of Ghent, and subsequent conventions.

In testimony whereof, the said affiant has signed his name, the day and year hereinbefore written.

JAS. E. KILGOUR.

Subscribed and sworn to before me, the subscriber, this fifth day of March, 1850.

GEO. N. ALVEY,
Justice of the Peace in and for St. Mary's Co., Md.

STATE OF MARYLAND, *sct.*

To all to whom these presents shall come, send, greeting:

Know ye, that on the ninth day of December, anno Domini eighteen hundred and thirty-eight, before George Combs, register of wills for St. Mary's county, the last will and testament of William Kilgour, late of St. Mary's county, deceased, was in common form of

law proved, approved, and exhibited, and that on the 22d of January, 1839, letters testamentary of all and singular the goods, chattels, rights, and credits which were of the said deceased, or in any manner or way concern his said testament, were granted unto James E. Kilgour, one of the executors in and by the said will named and appointed, he having first entered into bond for the due performance thereof according to law.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of St. Mary's county orphans' court, in the year of our Lord, this 29th day of Jaunary, 1850. [L. S.]

G. COMBS,
Register of Wills for St. Mary's county.

STATE OF MARYLAND, *St. Mary's county,* } *sct.*

I, H. G. S. Key, chief justice of the orphans' court, in and for the county of St. Mary's, and State aforesaid, do hereby certify that G. Combs, whose signature is annexed to the aforegoing certificate, is register of wills in and for the county, and State aforesaid, and that his said certificate and attestation is in due form of law. In testimony whereof, I have hereunto set my hand and seal, this 29th day of January, 1850.

H. G. S. KEY, [L. S.]

ST. INIGOES P. O., *May* 7, 1850.

DEAR JAMES: I received your letter by last mail, and am much pleased to learn that you have a prospect of getting your claim allowed by Congress. I know that your father, the late William Kilgour, sustained great losses during the late war with England, in property destroyed and taken off by the enemy while lying in the Patuxent river, contiguous to his farm. His farming operations had, in consequence, to be almost entirely suspended; his children were taken from school, and his family suffered, and have continued to suffer, the severest privations. In short, I looked upon his as a *ruined* and *broken-up* family.

You ask me for a certificate; perhaps this letter will answer the same purpose, How much I should rejoice if your father's family were to receive compensation for their long and severe sufferings.

With my ardent prayers for your success, I remain your affectionate uncle.

C. M. JONES, M. D.

MR. JAMES E. KILGOUR,
Charlotte Hall, Maryland.

ST. MARY'S COUNTY, MARYLAND,
January 25, 1857.

DEAR SIR: You ask me if I knew your father, Captain William Kilgour, and if so, to state what I recollect of his circumstances

during that acquaintance. I answer with pleasure, that I knew your father from my earliest recollection to the day of his death, having lived near him the greater part of his life, and in frequent intercourse with him. He was considered one of our best citizens, industrious and thriving, and had collected around him, at one time, property sufficient for the comfortable support of himself and family. But the war of 1812, 1813, and 1814, so disastrous to those residing upon the banks of the Patuxent river, in Maryland, fell, with all its crushing influence, upon him. All of his most valuable negroes were taken from him by the enemy, most of his stock, poultry, the supply of provision for the year, and all of the tobacco on hand, crops which he had been accumulating for years, with the hope that the return of peace would give him a remunerating price, all, all, either taken away, or burned. Thus you see in a single day he was stripped of nearly the labor of his life, and of that upon which he chiefly relied for the education of his children, and the support of himself and wife in the decline of life. Such a misfortune would have crushed most of us; but he had within him that which no one could take away—energy which never tires, spirit which never flags. He rallied, and although he never expected to repair his losses, for it was more than human effort could accomplish at his then period of life, and the means at hand, yet he saved his family from the want of food and raiment. But the most painful attendant of this misfortune was the necessity he was under of abridging the education of some of his children, which I have often heard you refer to with regret, because of the want of their labor for the general support of the family. If there ever was a claim upon government which demanded prompt settlement, in my poor judgment, his was one; and, although he died without receiving it, and is now, I hope happy, yet, I trust the government will now make an effort to repair the injury done the family by paying it to you without hesitation.

Wishing you great success, I am, dear sir, your obedient servant,

GEORGE THOMAS.

Captain JAMES E. KILGOUR.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 153.

SAMUEL M. PUCKETT.

[To accompany bill H. R. No. 786.]

JANUARY 30, 1857.

Mr. LAKE, from the Committee on the Judiciary, made the following

REPORT.

The Judiciary Committee, to whom was referred the memorial of Samuel M. Puckett, have had the same under consideration, and now report:

That about the 1st of October, 1837, William M. Gwinn, then the United States marshal for the State of Mississippi, by authority of a distress warrant issued from the Treasury Department of the United States against one Wiley P. Harris, register of the land office at Columbus, in said State, sold as the property of the said Harris certain tracts of land, situate in the county of Neshoba, in said State, comprising about eighteen hundred acres. The land was sold at public auction, and on a credit of one, two, and three years, for the sum of ten thousand six hundred and eighty-nine dollars and forty-one cents, ($10,689 41.) John E. Richardson and the memorialist became the purchasers thereof, and executed three promisory notes, together with John S. Gooch, to the United States, for the sum aforesaid. These notes have been sued on by the United States and judgments rendered thereon against the makers thereof, who, excepting the memorialist, are insolvent and dead. The memorialist paid some five thousand dollars on these judgments.

The marshall, at the sale thus spoken of, did not convey the said land to the purchasers, nor has he or any subsequent marshall made a title to the purchasers thereof. As the sale was made on time, it does not strike the committee as strange that no title was made, as the security for the purchase money was thereby increased by its being withheld. The purchasers were not put in possession of the land purchased, nor have they ever had possession of the same.

From the documentary proofs accompanying the memorial, your committee are convinced that the said Wiley P. Harris never owned the land which the marshall sold as his property, and consequently your memorialist and his co-purchaser (Richardson) acquired under that sale no title whatever.

The memorialist prays that he may be released from the judgments now standing against him, on account of this purchase, and reimbursed the amount paid by him in part satisfaction thereof. It ap-

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 153.

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pears from the memorial, that the purchasers of this land did not know of the defect in their title until after the judgments were obtained against them, and the part satisfaction thereof made as aforesaid. It is possible that if the purchasers had been aware of the fact that they had acquired no title under the sale aforesaid, and that therefore their notes had been given wholly without consideration, that this would have constituted a good defence to the actions of the government against them. But as they did not know of it, and it is a meritorious defence, your committee think that they ought to have the benefit of it on this appeal to the justice of Congress; and it matters not, in this view of the case, whether the defence was available in law, or only reliable in equity.

If this transaction had taken place between individuals, your committee entertain no doubt that relief could have been obtained either in the courts of law or equity.

On this point they have made some examination, and will refer to some authorities.

We find that when property, either real or personal, has been sold under execution, to which the defendant had no title, that the purchaser has been allowed to recover from the plaintiff on the execution to whom the money has been paid by the sheriff.

The case of Sanders *vs.* Hamilton, reported in the third volume of Dana's Reports, page 550, is directly in point. Hamilton had a judgment against Johnson, the execution of which was levied on personal property, which was sold by the sheriff, and purchased by Sanders, the plaintiff in the above named case. The property thus purchased and delivered to him was recovered by the rightful owner in an action of detainer against Sanders, who instituted this suit against Hamilton, the plaintiff, for whose benefit the personal property had been sold. The court held that Sanders could recover, and the measure of damages to be the amount paid by Sanders for the property.

In the same volume, at page 214, will be found the case of De Wolf and others against Mallett's administrators. In this case the court considered the effect of a sale under execution of a tract of land to which the defendant in the execution had no title, and say, at page 219 of the opinion, "that the sale itself is void both because the land sold is not the property of James DeWolf, senior, and because if it had been there was no judgment against him; and under these circumstances, the return of the officer on the execution can be set aside or amended, without resorting to a suit in chancery for that sole purpose."

Your committee would also refer to the case of Wolford *vs.* Phelps, reported in the second volume of J. J. Marshall's Reports, at page 31.

This was a chancery suit. The complainant (Wolford) had purchased at execution sale, in which Phelps was plaintiff, a tract of land mortgaged to Phelps, of which he, the purchaser, (Wolford,) was ignorant. The purchaser paid $180 in cash, and a sale bond for the remainder of the purchase money, and supposed he had bought a good title, free from incumbrance.

The complainant prayed to have the mortgage released, or the con-

tract rescinded, and his $180 returned to him. The court decreed that Wolford had bought a fee simple title to the land discharged from the mortgage, and was entitled to the relief prayed. The reasoning of the court in this case sustains fully the decisions already referred to. They reason thus: "Suppose a stranger happens at a sale of land made under execution, and becomes the purchaser; it turns out that his purchase is worthless; he finds afterwards that the defendant on the execution had no interest whatever in the land. Shall he be compelled to part with his money for nothing, without the semblance of a consideration? Shall we say to him *caveat emptor*? We think not." They also maintain that if the land was levied on by the direction of the plaintiff in the execution, that it is a fraud in him upon the purchaser; and if the sheriff makes the levy without instructions from the plaintiff, it is at least a mistake, and in either case the purchaser is entitled to relief.

These decisions by analogy your committee think sustain the application of the memorialist for relief. He cannot sue his government in chancery, but he is entitled to the equable relief that Congress can afford. We, therefore, report the accompanying bill, and recommend its passage.

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4TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 153.

SAMUEL M. PUCKETT.

[To accompany bill H. R. No. 786.]

JANUARY 30, 1857.

Mr. LAKE, from the Committee on the Judiciary, made the following

REPORT.

The Judiciary Committee, to whom was referred the memorial of Samuel M. Puckett, have had the same under consideration, and now report:

That about the 1st of October, 1837, William M. Gwinn, then the United States marshal for the State of Mississippi, by authority of a distress warrant issued from the Treasury Department of the United States against one Wiley P. Harris, register of the land office at Columbus, in said State, sold as the property of the said Harris certain tracts of land, situate in the county of Neshoba, in said State, comprising about eighteen hundred acres. The land was sold at public auction, and on a credit of one, two, and three years, for the sum of ten thousand six hundred and eighty-nine dollars and forty-one cents, ($10,689 41.) John E. Richardson and the memorialist became the purchasers thereof, and executed three promisory notes, together with John S. Gooch, to the United States, for the sum aforesaid. These notes have been sued on by the United States and judgments rendered thereon against the makers thereof, who, excepting the memorialist, are insolvent and dead. The memorialist paid some five thousand dollars on these judgments.

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The memorialist prays that he may be released from the judgments now standing against him, on account of this purchase, and reimbursed the amount paid by him in part satisfaction thereof. It ap-

pears from the memorial, that the purchasers of this land did not know of the defect in their title until after the judgments were obtained against them, and the part satisfaction thereof made as aforesaid. It is possible that if the purchasers had been aware of the fact that they had acquired no title under the sale aforesaid, and that therefore their notes had been given wholly without consideration, that this would have constituted a good defence to the actions of the government against them. But as they did not know of it, and it is a meritorious defence, your committee think that they ought to have the benefit of it on this appeal to the justice of Congress; and it matters not, in this view of the case, whether the defence was available in law, or only reliable in equity.

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The complainant prayed to have the mortgage released, or the con-

tract rescinded, and his $180 returned to him. The court decreed that Wolford had bought a fee simple title to the land discharged from the mortgage, and was entitled to the relief prayed. The reasoning of the court in this case sustains fully the decisions already referred to. They reason thus: "Suppose a stranger happens at a sale of land made under execution, and becomes the purchaser; it turns out that his purchase is worthless; he finds afterwards that the defendant on the execution had no interest whatever in the land. Shall he be compelled to part with his money for nothing, without the semblance of a consideration? Shall we say to him *caveat emptor*? We think not." They also maintain that if the land was levied on by the direction of the plaintiff in the execution, that it is a fraud in him upon the purchaser; and if the sheriff makes the levy without instructions from the plaintiff, it is at least a mistake, and in either case the purchaser is entitled to relief.

These decisions by analogy your committee think sustain the application of the memorialist for relief. He cannot sue his government in chancery, but he is entitled to the equable relief that Congress can afford. We, therefore, report the accompanying bill, and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 154.

JAMES HALL—LEGAL REPRESENTATIVES OF.

[To accompany bill H. R. No. 787.]

JANUARY 30, 1857.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the memorial of John E. Hall, make the following report:

By treaty between the United States and the Cherokee Indians west of the Mississippi, ratified the 23d of May, 1828, a portion of the then Territory of Arkansas was ceded to said Indians; and the settlers resident thereon and who should remove from such settlement according to the terms of the treaty, were, by the eighth section of the act of 24th May, 1828, entitled "An act to aid the State of Ohio in extending the Miami canal from Dayton to Lake Erie, and to grant a quantity of land to said State to aid in the construction of the canals authorized by law; and for making donations of land to certain persons in Arkansas Territory," authorized to enter with the proper register of the land office in Arkansas, a quantity of land not exceeding two quarter sections. Under this law of Congress, as appears from a communication from the Commissioner of the Land Office, a certificate was issued to James Lawrence, number 306, on claim number 213, which was located at the Little Rock land office on the 24th July, 1851, on certain lands, and that the location was afterwards set aside because of a prior claim, not shown by the books of the local land office at the date of location, as stated by Mr. Hall, the memorialist, who asks permission to relocate on other lands, he being the assignee of James Lawrence.

The time given by the law authorizing the previous location having expired before its cancelment, your committee see no reason why the prayer of the memorialist should not be granted, and herewith report a bill for his relief.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 155.

JOHN TEMPLE.

[To accompany bill S. 393.]

JANUARY 30, 1857.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred Senate bill No. 393, for the relief of John Temple, of Louisiana, adopt as their own the report of the Senate's committee, and recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES—*July* 18, 1856.

Mr. BENJAMIN made the following report, (to accompany bill S. 393.)

The Committee on Private Land Claims, to whom was referred the "memorial of John Temple, praying a confirmation of his title to a tract of land within the Bastrop grant," have had the same under consideration, and submit the following report:

The claim of John Temple was not filed with the commissioners under the act of 1851, providing for the adjustment of private land claims in the Baron de Bastrop grant, on the ground, as he alleges in his memorial, that he believed his claim was confirmed with the Bonaventure claim, which it adjoins.

The committee find a regular chain of title from Morehouse to John Temple. The claimant and the persons under whom he holds have been in uninterrupted possession of a part of the lands since 1807, and the remainder since 1812 and 1814, and the same has been inhabited and cultivated from the dates, respectively, up to this time. Two affidavits, accompanying the papers, show that the lands have been inhabited and cultivated for more than twenty years.

Your committee are unanimously of the opinion that if this claim had been presented to the commissioners under the act of 1851, with the proofs now before the committee, such commissioners would have *recommended this claim* for confirmation.

The omission of the memorialist to present his claim to the commissioners ought not, in the opinion of the committee, defeat the rights of the claimant under the act of 1851; they therefore report a bill to confirm the memorialist in his title to six hundred and seventy arpents of land, being the tract which he holds by a regular chain of title from Morehouse, and upon which he now resides; and respectfully recommend the passage of the bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 156.

PIERRE CAZELAR—LEGAL REPRESENTATIVES OF.

[To accompany bill S. 335.]

JANUARY 30, 1857.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

The committee of the House on Private Land Claims, to whom was referred Senate bill 335, for the relief of the heirs and legal representatives of Pierre Cazelar, deceased, agreeing fully to the report made by the Senate's committee, adopt it as their own, and ask that the bill be passed by the House.

IN THE SENATE OF THE UNITED STATES, *May* 23, 1856.

Mr. BENJAMIN made the following report, (to accompany bill S. 335.)

The Committee on Private Land Claims, to which was referred the papers relative to the private land claim of the legal representatives of Pierre Cazelar, have had the same under consideration and submit the following report:

The committee find a report on this claim, submitted to the Senate from the Committee on Private Land Claims, on the 17th of February, 1855, which is as follows:

"From the papers in this case it appears that as early as 1764 these lands were in cultivation by a Mr. Carriere; that the orphans' court of the then Territory of Orleans, prior to 1764, had put the said Carriere into possession of the plantation in question as the heir-at-law of his parents, then deceased; that the said Carriere, on July 14, 1764, as appears from a deed duly certified, &c., conveyed his right to S. Decalogne, who, on March 30, 1784, conveyed his right to the plantation to Thomas Porée; that the said Porée, by deed dated April 18, 1806, conveyed the plantation in question to William Flood; that the heirs and legal representatives of the said Flood, then deceased, on April 12, 1854, conveyed by deed all their right, title, and interest to the plantation in question to Pirre Cazelar, who has since deceased. Thus, from the papers, it appars that the heirs of Pierre Cazelar, deceased, and those under whom

they claim, have been in possession and have cultivated the said plantation from the year 1764 to June 24, 1854, the filing of their petition, a period of ninety years. That the claimants, at the time of the appointment of commissioners to adjust private land claims in Louisiana, did not file their claim before the commissioners, believing they then possessed a legal title to the land. Your committee are fully of the opinion that, had this claim been submitted to the commissioners, they would have recommended it for confirmation, upon the papers now before them. Your committee do not hesitate to say that this is one of the most meritorious cases that has been presented to them."

The committee endorse to the fullest extent the report above set forth, and are unanimously of the opinion that justice and good faith alike demand that these lands, possessed and cultivated for ninety years by the claimants, or those under whom they claim, should be confirmed; they have therefore directed me to report the accompanying bill, and respectfully recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 157.

JAMES MONROE.

JANUARY 30, 1857.—Ordered to be printed.

Mr. SAPP, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of James Monroe, respectfully report:

The memorialist prays Congress to pay him for three horses which he lost in the war of 1812, in the public service, from the following diseases: One died from a snake bite, another from a dislocation of the shoulder, and the third with the cholic. The period of this singular fatality of the petitioner's horses is so long since, the evidence produced to sustain the claim so insufficient, and the character of the same being outside of the rule governing Congress in allowing relief for horses lost, as to force your committee to ask to be discharged from its further consideration.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 158.

FREDERICK STEPHENS.

JANUARY 30, 1857.—Ordered to be printed.

Mr. C. C. WASHBURNE, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Frederick Stephens, report:

That the petitioner represents that he was draughted as a soldier during the late war with Great Britain, at Bainbridge, in the State of New York; that he was one month in the service when he was taken sick, and so continued for several months; that when his company was discharged, his name was not on the rolls, and in consequence he was not paid for his services. He asks that three hundred dollars may be allowed him for his services, and to compensate him for his sickness. The committee know of no principle or precedent which would justify them in reporting in favor of paying any portion of the claim of the petitioner that is not based upon actual service. That actual service consisted in doing duty for one month in the ranks; and as he was not regularly discharged, the committee cannot presume that he was entitled to pay for a longer period. If the petitioner's allegation that he was not paid was sustained by other proof than his own oath, the committee would see no reason for refusing to report in favor of allowing him for his actual service. The petitioner having received a land warrant for one hundred and sixty acres, his case is not regarded as one of great hardship, or requiring the interposition of Congress. The committee therefore recommend that the prayer of the petitioner be not granted.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 159.

SYLVESTER CHURCHILL, UNITED STATES ARMY.

[To accompany bill H. R. No. 788.]

JANUARY 30, 1857.

Mr. B. CLARK, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Sylvester Churchill, United States army, respectfully report:

The facts in the case are fully set forth in a report made to the Senate during the last session by Mr. Shields, from the Military Committee, and are as follows:

He was appointed inspector general on the 15th of September, 1841, to rank from the 25th June of that year. On the 23d August, 1842, a law was passed which, among other things, abolished the office of one of the two inspector generals of the army.

The President and Secretary of War, however, found it absolutely necessary, for reasons which they assign at length, to continue both inspector generals until the 29th of April, 1845, during which time the memorialist discharged the duties of the office with acknowledged zeal and ability.

On the 29th of April, 1845, the President deemed it necessary, under the law already alluded to, to abolish the office, and the memorialist, being the junior, was honorably discharged. The necessity of the service, however, and the injustice done to a meritorious officer, induced Congress to restore the office, and on the 21st January, 1846, the memorialist was restored to his former rank and emoluments.

During the interval from July 8, 1845, until January 21, 1846, he continued in public employment, and, by an oversight in the act which restored his office, he is unable to draw pay for that period without a special act. The amount is $1,020 14, to which he is justly entitled.

The committee concur with the War Department in recommending that justice be done in this case to a gallant and meritorious officer.

The appointment of inspector general certainly was conferred upon him with the intention that he should hold it during good behaviour. It was never contemplated that a contingency could arise which would result in the abolition of his office. If it were, the memorialist would certainly not have given up his position in the army, the tenure of which is life, for the temporary position of an inspector general, which conferred but little additional rank. He would certainly not have done

so at a time when his indisposition to accept the place was so great, that it was offered to him again after having been once declined. Congress, in restoring the office, evidently looked at the case in such a point of view. It felt that great wrong had been done General Churchill, who, to give his talents to the government in a position for which he was conceived to be eminently suited, reluctantly abandoned the place of a major in the army, relying upon the good faith of the government that the tenure of the new position would be regulated only by the same contingencies which governed the one he was called upon to abandon. In restoring the office to General Churchill under such a pressure of circumstances, Congress evidently intended that he should be paid for the interval between the time of his discharge and the period of his restoration. But without reference to this fact, General Churchill, during said interval, performed services at the request of the officers of the government, which afford an ample consideration for the amount of his salary for that time. The committee accordingly report a bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 160.

HARRISON HOUGH.

JANUARY 30, 1857.—Ordered to be printed.

Mr. BENSON, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Harrison Hough, late a purser's clerk in the navy, praying for compensation for time lost by sickness, have had the same under consideration, and report:

That the prayer of said petition ought not to be granted, for the reasons assigned by the Secretary of the Navy, in a letter dated January 10, 1857, which is made a part of this report.

NAVY DEPARTMENT,
January 10, 1857.

SIR: Your letter of the 7th instant, enclosing the petition of Mr. Harrison Hough, having been referred to the Fourth Auditor of the Treasury, he reports to me that he does "not know of any instance in which pay has been allowed to a person as purser's clerk under circumstances similar to those of the petitioner. A purser is allowed by law but one clerk. Mr. Hough had been clerk to Mr. Fauntleroy, the purser of the frigate Savannah, but he had been removed, and another appointed in his place, who did the duty and received the pay. Mr. Hough had ceased to be attached to the vessel in that or any other capacity, and therefore was not entitled under the existing laws to any compensation." The petition is herewith returned.

I am, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. SAMUEL P. BENSON,
Chairman Committee Naval Affairs, H. R.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT, No. 161.

RACHEL FOX.

[To accompany bill H. R. No. 790.]

JANUARY 30, 1857.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom the petition and papers in the case of Rachel Fox, widow of William Fox, were referred, have had the same under consideration, and beg leave to report:

That the claimant sets forth in her petition that long before, and during the revolutionary war, she resided in her uncle's family, (Col. George Miller,) in the village of Germantown, county of Philadelphia, Pennsylvania; that on the 4th October, 1777, and during the time in which the battle was fought at Germantown in that year, and as she was standing at the door of the house of her uncle, an American officer, wounded and faint with loss of blood, staggered in and besought her to give him a drink of water, which she hastened to do, and when she returned with a pitcher full, she found him so weak and exhausted that she was obliged to hold it to his lips, and whilst in the act of so doing, she was assaulted by a gigantic Scotchman, a soldier in the British army, who attempted to insult her, and she resisting he drew a broadsword and struck her across the shoulder to about half-way between it and the elbow, inflicting a deep and dangerous wound. Immediately after the wound was received, a British officer passed by, and having seen the attack, ordered him under guard, and sent for a surgeon of the English army, who dressed the wound. This wound left the arm disabled to a great extent in the early part of her life, causing much pain, and, ultimately, it became paralyzed. That the husband of said Rachel Fox was also a soldier in the war of the revolution, from the beginning to the end of the same, at intervals. That his service was rendered only as a draughted militia man, or as a substitute for some one else, but never as an enlisted soldier. That he served under Captain Humphrey Williams, and under Captain William Renshaw, and was at the battles of Brandywine, Paoli, Germantown, Elizabethtown, Princeton, New Brunswick, and other places which she does not now recollect; that her said husband died *many years ago*, at the age of eighty-four, without ever

having received any bounty from government, and that she has never received any bounty, either from the State of Pennsylvania or from the general government. She now prays that, in consideration of the services of her husband and the wound she has received, from which she never recovered, that your honorable bodies will place her name on the pension list, or grant her such additional aid as may seem proper.

She accompanies her statement with the affidavit of "Dr. A. M. Cassidy, surgeon of the 69th regiment of the Pennsylvania militia," who corroborates the same as to the nature and extent of the wound she received, and states that it is four inches in breadth, and that from the same it has produced a total paralysis of the arm.

There are three other witnesses, each of whom testify to the high respectability of Rachel Fox and her husband, William Fox, and of the condition of her arm; who state that they have known her for many years, and believe that from the statements frequently made by the said Rachel Fox and her husband that it was produced as aforesaid.

These witnesses also state that they have frequently heard William Fox, the husband of the petitioner, speak of the incidents and circumstances relative to the battles through which he had passed; that he was at the battles of Germantown, Paoli, Brandywine, Princeton, and others, and that they are fully satisfied of the truthfulness of these statements.

Your committee are satisfied as to the credibility of the statements of the claimant, and that she is entitled to the favorable consideration of Congress, both on account of the service of her said husband and that of the wound she received while in the discharge of so humane a duty as that of rendering aid to a wounded American officer, in consequence of which she has been made a cripple for life.

Congress originally provided pensions for those of the revolutionary soldiers who should become disabled by wounds in the service of their country.

Your committee can draw no equitable distinction between the case in point and that of a soldier, and in view of the peculiar circumstances of the case, viz: that of the misfortune she suffers, in connexion with the fact that her husband had been a soldier for a long time, they would recommend that her name be placed on the pension roll, under the act of 4th July, 1836, to continue during her natural life, and for this purpose report a bill.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 162.

JOHN NEAL—CHILDREN OF.

[To accompany bill H. R. No. 792.]

JANUARY 30, 1857.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of A. G. Neal, son of John Neal, deceased, ask leave to report:

That it appears from the declaration of A. G. Neal, based upon the oft-repeated statements of his father in his lifetime, and from the affidavit of Elizabeth Easter, a sister of the soldier, that John Neal was a revolutionary soldier; and by the affidavits of two other witnesses, who had known him for forty years, that he was always looked upon as, and believed to have been, a revolutionary soldier.

The petitioner states that his father often, in his lifetime, spoke of his right to a pension, and said that the records of South Carolina would furnish proof of his service. The indents furnished by the comptroller of South Carolina show a large amount of service in the name of John Neal, although the name is spelt sometimes Neil, at others Neal.

The petitioner states that himself, Jessee Neal, and Elizabeth Neal, are the only surviving children of the said John Neal, deceased, late of Mississippi.

Your committee are of opinion that this is a meritorious claim, and report a bill accordingly.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 163.

COL. BENJAMIN WILSON—LEGAL REPRESENTATIVES OF.

[To accompany bill H. R. No. 793.]

JANUARY 30, 1857.

Mr. BROOM, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the memorial of the legal representatives of Colonel Benjamin Wilson, report:

The memorial of the children and other heirs of Colonel Benjamin Wilson, late of Harrison county, in the State of Virginia, deceased, represent: That their said ancestor entered the military service of that State (then a colony) as early as the year 1774, when he served as lieutenant, under Governor Dunmore, against the hostile Indians, and that he continued to hold commissions in the State militia, rising through the successive grades, until the year 1795; that during the period of the revolution he was frequently in active service, and that after the close of that contest he was from time to time in arms against the Indians, until the frontier was quieted by the treaty of Greenville in 1795, about which time he resigned the commission he had held since the year 1781 as colonel of Harrison county militia.

In support of these allegations, the memorialists refer to the histories of the times, in which Colonel Wilson had obtained such reputation as to be mentioned by name with high commendation, and to certain documents recovered from among the few which at this late day remain of the private papers of the deceased veteran.

The memorialists assimilate the services of their ancestor during the revolution to those of the officers of the Virginia State and continental lines, and ask an allowance equivalent to the commutation of half pay granted to those officers.

Although the evidence produced proves much of the service alleged, and the committee are satisfied by the historical and other references that all of it was performed, they are not prepared to recommend the extension of the commutation to any other officers than those to whom it was promised by the resolutions of the continental Congress, and cannot, therefore, report a bill in conformity with the prayer of the memorialists.

With regard, however, to the claim for services rendered subsequently against the Indians, the case is different.

It is historically known that from the commencement of the revolution to the conclusion of the treaty of Greenville, the western frontier of Virginia was harassed incessantly by threatened or actual Indian hostilities; and Colonel Wilson was undoubtedly, from his military rank, experience, and standing in the community, one of the foremost in the defence of the settlements. Indeed it is stated, from a source of unquestionable authority, that his residence was the refuge of the surrounding settlers in time of danger, and was then and long thereafter known as "Wilson's fort."

It is only, however, during a portion of this period that the services of Colonel Wilson were of such a nature, and are established by such evidence, as to afford ground of such claim as can be recognized by this government according to the existing practice.

It appears from original instructions now produced, signed by General Henry Knox, Secretary of War, and issued on the 13th of April, 1790, that at that date the general government determined to take more efficient measures for the relief of the western frontier, and in this paper directions are given for calling into service portions of the militia of the county, for stating the accounts of the men engaged, and for proving their service in such form as to obtain payment from General Harman, or the commander of the United States troops on the Ohio, under whose direction such service was to be rendered. It was expressly stated that the arrangement was but an experiment, and could not be continued unless great care and economy should be observed by the militia officers in the use of this discretionary power.

These instructions were received by Colonel Wilson, as proved by an endorsement thereon in his own hand, on the 10th of August, 1790; and it further appears by original returns made by him. and a report signed by him as colonel of Harrison county militia, that scouts or rangers were detailed for duty, under these instructions, at various periods from that date to the 2d of December, 1792; that the general government assumed payment of those who were in service when the instructions were received, retrospectively, from the 1st of May, 1790, a date subsequent to that of the instructions, but several months prior to their receipt by Colonel Wilson, and that the last payment made by him was on the 17th of March, 1794.

The precise nature of the services performed by Colonel Wilson in reference to these details is not established fully by the original documents produced. In one case only is it distinctly stated that he himself ordered out the men; but there can be no doubt, from the manner in which the returns were made by him, and from the fact that he stated the accounts and paid off the men, that he acted under the instructions above mentioned, and discharged all the duties thereby imposed. The services thus rendered appear in every respect similar to those performed by militia officers in certain cases during the late war with Mexico, "in organizing volunteers," which have been paid for under the general acts of March 2, 1847, (9 Stat. 206,) and June 2, 1848, (9 Stat. 236,) and the committee are of opinion that the services of Colonel Wilson should be remunerated on the same principle;

they therefore report a bill allowing pay from the date when he received the instructions from the Secretary of War to the date of the discharge of the last detachment of militia called out in pursuance thereof. This period is little more than half that which would be arrived at by taking for its commencement the date when the United States assumed payment of the militia, and for its termination the date of the last payment made by Colonel Wilson to the said troops. Though these dates perhaps mark strictly the beginning and end of Colonel Wilson's service as proven, under the authority of the United States; yet his service is not shown to have been continuous, and, under the circumstances, cannot be supposed to have been so. Payment for the shorter period, therefore, is all that the claimants are entitled to expect.

H CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT
d Session. } { No. 164.

DANIEL MALLORY—LEGAL REPRESENTATIVES OF.

[To accompany bill H. R. No. 789.]

JANUARY 30, 1857.

FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

e Committee on Military Affairs, to whom was referred the memorial of the legal representatives of Daniel Mallory, deceased, have had he same under consideration, and respectfully report:

t appears that in the early history of the national armories, from scarcity of that peculiar kind of labor and skill required in the nufacture of small-arms, a practice to a very limited extent prelled of having boys of fourteen or fifteen years of age bound to the vernment as apprentices. These indentures of apprenticeship were gularly executed between the father on behalf of his child, and the perintendent on behalf of the government. They were modelled on the law and usage of the State where the national armory was cated. In Virginia, and no doubt in Massachusetts, the provision as invariably inserted, requiring the government to teach the apprentice the trade and business of an armorer, to give him an elementary education, and at the expiration of his term of service two suits f clothes.

It appears from a letter of Mr. Calhoun, dated on the 3d of April, 320, written when he was Secretary of War, "that the records of at department do not furnish any evidences that the superintent was authorized to take apprentices to learn the trade of an morer." Whether the records of the War Department show evince of such authority or not, or whether any such authority in int of fact ever was given, it is nevertheless an unquestionable fact at such a practice did prevail for a short period at the national mories. Two instances of the kind have been brought to the attenn of the committee: one, that of Daniel Johnson, already provided r by a special act of Congress; the other, the claim now under conleration.

The two cases appear to be identical in all their material facts. *ey were both bound by* indentures of apprenticeship to the then *erintendent of the United* States armory at Harper's Ferry, to *n the trade of armorers,* from the date of their indentures, until

they should attain the age of twenty-one years, and were entitled under their indentures to board, clothing, and lodging, and a certain portion of education, and at the expiration of their service to two suits of clothes. They both diligently aud faithfully performed the duties of their apprenticeship during its whole term, without receiving the benefits of the education, and the two suits of clothes, which the government was bound by the terms of the indenture to give them. In the case of one of these parties, (Daniel Johnson,) Congress paid him the value of what he was entitled to at the hands of government, which it estimated to be $194, the aggregate cost of what his schooling and clothing would have amounted to. In the case of Daniel Mallory, the committee deem him to have been entitled to a like measure of relief, and accordingly report a bill giving to his legal representatives one hundred and ninety-four dollars.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 165.

JOSEPH B. JOYAL.

[To accompany bill H. R. No. 794.]

JANUARY 30, 1857.

Mr. K. MILLER, from the Committee on Revolutionary Pensions, made the following

REPORT.

The Committee on Revolutionary Pensions, to whom was referred the petition of Joseph B. Joyal, praying for bounty land on account of the services of his father in the revolutionary war, and for increase of pension, report:

That as appears from the evidence and papers on file in the Pension Office, and sent down to your committee at their request, the father of the petitioner, John B. Joyal, at the breaking out of the revolutionary war, was an inhabitant of Canada, and on the approach of General Montgomery's army in Canada, in 1775, he joined the continental regiment, commanded by Col. James Livingston, in Captain Paulent's company, and was detached and went with Col. Ethan Allen to the attack of Montreal, when taken prisoner; made his escape and joined his said regiment and marched to Quebec; and was present and engaged in the battle when General Montgomery was killed. That after raising the seige of Quebec, and on the retreat of the American army, his regiment was engaged in the battle at Three Rivers, where he was made a prisoner, with some others, and sent to Sorel, where he was tried by a court martial and condemned to hard labor during the war, and if found again in arms was to be shot. That he was removed to Isle-aux-Noix, where he was compelled to labor on the fortifications for two years and upwards, and then let out on parol to his home, at Belisle, to the end of the war. In 1792, he, with his son, the petitioner, moved into the State of Vermont and was pensioned under the act of June 7, 1832, and died at Swanton, Vermont, the 23d December, 1848, at the age of one hundred and eight years.

It further appears from proclamations by authority of Congress (see Journals of Congress, 1774, vol. 1, pages 40 to 48, 74 to 76, and 245 to 246) that inducements and promises of protection were made to the Canadians if they would join us in our independence. And again Congress "resolved that provision ought to be made by law for donating of land to the refugees from the British provinces of Canada and Nova Scotia, pursuant to the resolves of Congress of the 23d of

April, 1783, and the 13th of April, 1785," (see Journals of Congress, vol. 2, page 632.) It appears that Congress, in addition to what New York granted to the Canadian and Nova Scotia refugees, allowed to privates 100 acres of land, and that New York allowed 500 acres, making 600 acres to each soldier, but in the returns made the name of said Joyal was omitted, and consequently did not receive his quota of land as other Canadians did. And there remains no more lands set apart for that purpose in New York. Said Joyal, in effect, served through the whole war, if the time allowed for his imprisonment and parol is admissible.

Your committee can see no good reason why the promises to them should not be carried out by the United States, in whose service he engaged, nor why he should not receive the same quantity of land that the heads of other Canadian families received. An increase of pension is prayed for. But your committee do not see any reason for increasing his pension which would not as well apply to thousands of others in like circumstances, and they, therefore, ask to be discharged from further consideration of the increase of pension.

And they report a bill for the bounty lands his father did not receive.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 166.

ZINA WILLIAMS.

[To accompany bill H. R. No. 795.]

JANUARY 30, 1857.

Mr. ROBBINS, from the Committee on Invalid Pensions, made the following

REPORT.

The Committee on Invalid Pensions, to whom were referred the papers in the claim of Zina Williams, of the State of New York, for an invalid pension, have had the same under consideration and report:

That the petitioner was called into the service in the war of 1812 in September, 1814, from Montgomery county, New York, and marched to Sacket's Harbor, in New York, where he was on duty, without shelter, sleeping (if at all) upon the ground; sickness prevailed in camp, and on the first of October, 1814, he was taken sick of the prevailing camp disease, and was sent to the hospital, where he was attended by two surgeons; his sickness settled into a fever; his friends sent for him; with difficulty carried him home on a bed; he was confined to his bed eighteen months, the fever concentrating in his left hip, causing great pain and contraction of the muscles, resulting in almost the entire loss of the use of the left leg; the disability continuing from that time to the present, and of a nature incurable; that he is a farmer, a sober, temperate, prudent man, and is clear from any charge of imprudence or exposure as the cause of the continuation of his disability.

The above facts are established by the testimony of two surgeons, certified to be highly respectable in their profession, who saw him on his sick bed as he returned, and who then attended him, and who have ever since that time been his physicians, and who now, upon their oaths, state that his disability is a total one. They further state that it is incurable and can never be less.

It is further proven, by the testimony of Samuel Freeman, that he saw him on his sick bed returning home. The further testimony of Simon Frager, John W. Shaver, and William Shaver, who were soldiers with him in camp, and who knew of his sickness in camp; and the further testimony of Isaac H. Williams and John Fish, and a second affidavit of the surgeons, all testifying to the sobriety of the applicant; all the witnesses certified to be credible, truthful persons.

The committee report a bill for his relief, and recommend its passage.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 167.

JAMES BEATTY'S PERSONAL REPRESENTATIVE.

[To accompany bill H. R. C. C. No. 19.]

JANUARY 30, 1857.

Mr. BISHOP, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the bill of the House (C. C. No. 19) entitled "A bill for the relief of James Beatty's personal representatives," report:

That they have carefully considered the above described bill, and are of the opinion that it ought not to pass. The opinion of the committee is so well expressed in the dissenting opinion of Judge Blackford, of the Court of Claims, upon the bill, that they adopt said opinion, and make it a part of this report.

BEATTY'S EXECUTOR *vs.* THE UNITED STATES.

Dissenting opinion, delivered by Judge Blackford:

I dissent from the judgment of the court in this case.

The petition which is attached to this opinion does not allege that the duties sued for were paid under protest.

The only question, therefore, which need be considered is, whether overpaid duties, paid without protest, can be recovered back by a suit in this court?

That question ought, in my opinion, to be decided in the negative.

The opinion on this subject, delivered by me a few days ago, in Sturges and others *vs.* the United States, is annexed to this opinion, and is to be considered a part of it.

The act of Congress of 1845, referred to in that opinion, after saying that nothing contained in the second section of the act of the 3d of March, 1839, "shall take away, or be construed to take away or impair the right of any person or persons who have paid or shall hereafter pay money, as and for duties under protest, to any collector," &c., concludes as follows: "Nor shall any action be maintained against any collector to recover the amount of duties so paid under protest, unless the said protest was made in writing and signed by the claimant, at or before the payment of said duties, setting forth dis-

tinctly and specifically the grounds of objection to the payment thereof."—(5 Stat. at Large, 727.) In the opinion in Sturges and others *vs.* the United States, I stated that I considered that act of 1845 to be as applicable to a suit in this court, against the government for overpaid duties, as it is to a suit for that cause in any other court against the collector. When that opinion was delivered, I was not aware that the principle just alluded to had been recognized by any of the courts; yet, as it appeared to me so perfectly clear, I did not hesitate to adopt it. But I have since found that the same doctrine, namely, that a suit against a collector for overpaid duties is, in substance, a suit against the United States, had been expressly decided by the circuit court of the United States for the Maryland district. The following is the language of the court:

"For this suit, although in form against the collector for doing an unlawful act, is, in truth and substantially, a suit against the United States. The money is in the treasury, and must be paid from the treasury if the plaintiff recover. And as the United States cannot be sued and made a defendant in a court of justice, without their consent, they have an undoubted right to annex to the privilege of suing them any conditions which they deem proper. And, in the exercise of this power, they have granted this privilege in the form of a suit against the collector, where duties are supposed to be overcharged, upon condition that the claimant, when he pays the money, shall give a written notice that he regards the demand as illegal, and means to contest the right of the United States in a court of justice; and stating also, at the same time, distinctly, the specific grounds upon which he objects. This is the condition upon which he is permitted to sue the collector, and thus to appeal from the administrative to the judicial department of the government. It is a condition precedent."—(Mason and Tullis *vs.* Kane, MSS.)

That opinion was delivered by Chief Justice Taney, and decides that a suit against the collector for overpaid duties is, in truth and substantially, a suit against the United States. And it also decides that such a suit cannot be sustained if the duties were paid without protest.

If that decision is correct, as it undoubtedly is, it shows conclusively that the suit now before this court, which is a suit against the United States for overpaid duties, paid without protest, is forbidden by the act of 1845, and, of course, cannot be sustained.

The claimant's main argument is, that his testator's money has been unlawfully obtained by the government, and that he has therefore a right to recover it back. The fallacy of that argument consists in assuming what is not true, namely, the unlawfulness of the collection of the money. The truth is, that the money having been paid without protest, was lawfully received by the collector and by the government.

Congress, as a matter of policy, enacted the aforesaid act of 1845; and the Supreme Court of the United States have decided, as they were bound to decide, that, according to that act, duties paid without protest are not illegally exacted.—(Lawrence *vs.* Caswell, 13 Howard, 496.) The Court of Claims, like every other court, is bound by the

law; and as the act of 1845 has forbidden any suit to be brought against the collector (which, it is decided, would be in truth a suit against the United States) for duties paid without protest, this court cannot, whilst that act is in force, sustain a suit against the government for duties so paid.

The act of 1845 fixes a reasonable time within which objections to the duties charged may be made, and says that if the objections are not made within the time the duties shall not be recovered back. The object of that act is to secure prompt and final settlements relative to the duties, whilst the facts can be easily ascertained, and to prevent the continual disputes and frauds which would be occasioned by delay. The act appears to be founded on sound policy; but whether it is so or not is a question for the consideration, not of the courts, but of the legislature.

I am of opinion, for the above reasons, that this suit for overpaid duties, paid without protest, cannot be sustained.

BEATTY'S EXECUTOR *vs.* THE UNITED STATES.

Judge Blackford's dissenting opinion:

Suit for overpaid duties.

I dissent from the final judgment rendered in this case by a majority of the court in favor of the claimant.

The ground of my dissent is, that the duties sued for were paid without any objection, either written or verbal. The payment was therefore voluntary, and cannot be recovered back. That doctrine is settled by the common law and by the act of Congress of 1845. Indeed, the act of Congress requires a written protest, stating distinctly and specifically the grounds of objection to the payment.—(5 Stat. at Large, 727; see Marriott *vs.* Brune, 9 Howard, 619, 636; Lawrence *vs.* Caswell, 13 Howard, 488, 496.)

The reasons of my dissent are given at length in the opinion heretofore delivered by me in this case, on the question as to the validity of the petition; which opinion is hereto appended, and made part of this opinion.

The dissenting opinions heretofore delivered by me in the cases of Sturges, Bennet & Co. *vs.* The United States, Spence and Reid *vs.* The United States, and Wood *vs.* The United States, are also hereto appended, as a part of this opinion.

STURGES, BENNET & CO. *vs.* THE UNITED STATES.

The dissenting opinion was delivered by Judge Blackford.

I am obliged to dissent from the judgment of the court in this case.

The petition attached to this opinion shows the grounds of the

claim. The duties sued for were collected during the years 1847, 1848, 1849, 1850, and 1851.

The petition, in my opinion, is defective, because it does not allege that any of the duties were paid *under protest*. The act of Congress of 1845, chapter 22, prohibits any suit against a collector for overpaid duties, if the payment was made without protest. That point is expressly decided by the circuit court of the United States for the Maryland district, at the April term, 1849, in Brune *vs.* Marriott. In that case the protest was not made until *after* some of the duties were paid, and the decision was, that for such of the duties there could be no recovery. The language of the court is as follows: "The remaining question is, what duties were paid under protest, within the meaning of the act of 1845? That act requires that the protest shall be made in writing, signed by the claimant, at or before the payment of the duties, and set forth, distinctly and specifically, the grounds of objection. The protest of April 9, 1847, cannot apply to the payments previously made, and the plaintiff is not entitled to recover them. But it is sufficient to cover all subsequent payments," &c.

If there has been a protest, the suit is allowed, as the statute expressly says, in order "to ascertain and try the legality and validity of such demand and payment of duties." I consider that statute to be as applicable to a suit in this court, against the government for overpaid duties, as it is to a suit for that cause, in any other court, against the collector. The object of both suits is the same, namely, to ascertain and try the legality and validity of the demand and payment of duties alleged to have been overpaid. If such demand and payment of duties were legal and valid, the importer cannot, in a court professing to be governed by legal principles, recover those duties, either from the collector or from the government. That appears to me to be a clear proposition. Congress has thought proper, by the law of 1845, to prescribe a certain rule for the collector and importer relative to the collection of duties; and whilst the law is in force that rule must be complied with. The rule is, that if the importer wishes to object to the amount of duty charged, the objection must be made at or before the payment of the duty. If no objection be made within the time limited by law, the demand and payment of the duty must be considered legal and valid.

It will be observed that the statute of 1845, which prohibits any suit for overpaid duties, unless there has been a sufficient protest, applies to duties of every description, without exception.—(5 Stat. at Large, 727.) The effect of this statute relative to the protest is clearly stated in an opinion delivered by Chief Justice Taney in 1849. His language is as follows: "The protest is not required to be made on or before the payment of what are called the estimated duties; for this payment is necessarily regulated by the invoice quantity, as well as the invoice price. The importer cannot, at that time, know whether there has been any loss by leakage; nor can he know, after it has been ascertained by the weigher and gauger, whether the collector will exact duties upon the amount stated in the invoice.

"The payment is legally made when the duties are finally determined, and the amount assessed by the collector; and a protest before

or at that time is sufficient notice, as it warns the collector, before he renders his account to the Treasury Department, that he will be held personally responsible if the portion disputed is not legally due, and that the claimant means to assert his right in a court of justice.

"The payment of the money upon the estimated duties is rather in the nature of a pledge or deposite than a payment. For it remains in the hands of the proper officer, subject to the final assessment of the duties; and if more has been paid than is due, (which is most commonly the case,) the overplus belongs to the importer, and is returned to him."—(Brune *vs.* Marriott, before cited.) The Supreme Court affirmed that judgment, using, as to the protest, the following language: "But where the duties had not been closed up in any cases when the written protest in April was filed, though the preliminary payment of the estimated duties had taken place, the court justly considered the protest valid; because, till the final adjustment, the money remains in the hands of the collector, and is not accounted for with the government, and more may be necessary to be paid by the importer."—(Marriott *vs.* Brune, 9 How., 619, 636.)

The law is, therefore, settled, that under the aforesaid statute of 1845, the importer is not required to make his protest until after the weigher or gauger has made his return, and the importer has had a full opportunity to know what that return is, and for what sum he is legally chargeable. That being the law, it is clear that there can be no hardship or injustice in requiring the protest. But, on the other hand, if at any distance of time after duties have been paid without objection, and with a full opportunity of knowing the facts, the United States are to be subject to be called upon for alleged overpaid duties, there will be no end to the evils that will ensue.

The language of the Supreme Court of the United States in 1851, with respect to the question now under consideration, is as follows: "But it is proper to say, in order that the opinion of the court may not be misunderstood, that when we speak of duties illegally exacted, the court mean to confine the opinion to cases like the present, in which the duty demanded was paid under protest, stating specially the ground of objection. Where no such protest is made, the duties are not illegally exacted, in the legal sense of the term; for the law has confided to the Secretary of the Treasury the power of deciding, in the first instance, upon the amount of duties due on the importation. And if the party acquiesces, and does not, by his protest, appeal to the judicial tribunals, the duty paid is not illegally exacted, but is paid in obedience to the decision of the tribunal to which the law has confided the power of deciding the question.

"Money is often paid under the decision of an inferior court, without appeal, upon the construction of a law which is afterwards, in some other case, in a higher and superior court, determined to have been an erroneous construction; but money thus paid is not illegally exacted. Nor are duties illegally exacted where they are paid under the decision of the collector, sanctioned by the Secretary of the Treasury, and without appealing from that decision to the judicial tribunals by a proper and legal protest. Nor are they within the principle decided in the case before us."—(Lawrence *vs.* Caswell, 13 Howard, 488, 496.) That

is the unanimous opinion of the highest judicial tribunal in the United States on the precise question now before us. It is the opinion of that court on the meaning of the act of Congress of 1845, before referred to. That opinion is, that duties paid *without protest*, as the duties in the case before us were paid, are not illegally exacted; and, surely, if the duties now sued for were not illegally exacted—that is, if the collection of those duties was lawful, the claimants can have no right, in a court of justice, to recover them back, either from the collector or from the government.

My opinion is, therefore, that the petition shows no ground for relief.

SPENCE & REID, CONSIGNEE AGENTS OF MASON & TULLIS, *vs.* THE UNITED STATES.

[The petition of the claimants is hereto attached.]

Dissenting opinion, delivered by Judge Blackford:

I dissent from that part of the judgment in this case which sustains the present suit as to certain overcharged duties.

The duties in question were paid to the collector without a written protest setting forth the grounds of objection, and were aferwards paid by the collector into the treasury of the United States.

The decision of the court is, that duties paid without such protest may be recovered back by a suit in this court. That decision is, in my opinion, contrary to the act of Congress of 1845, chapter 22.

The dissenting opinions delivered by me in the cases of Sturges, Bennet & Co. *vs.* The United States, and of Beatty *vs.* The United States, are hereto attached and made part of this opinion.

Mason & Tullis, for whose use this suit is brought, sued the collector in Baltimore for overcharged duties on the same pimento mentioned in the present petition. The circuit court of the United States decided, in that case, that the suit was, in substance, a suit against the United States, and that "*the money was in the treasury, and must be paid from the treasury if the plaintiff recover.*" They also decided that the suit would not lie, because there was no legal protest.—(Mason & Tullis *vs.* Kane, circuit court of the United States for the Maryland district, April term, 1851.) That decision is in direct opposition to the present decision of this court in substantially the same case. The consequence of the judgment in this case is as follows: A merchant sues the collector in a circuit court of the United States for overcharged duties. The effect of the suit, if successful, is to obtain from the treasury of the United States the amount of those duties. But the suit fails for *the want of a legal protest.* The same merchant then turns round and sues the United States, in the Court of Claims, for the same duties, and recovers *without such protest.* One court decides that the treasury of the United States is liable upon the same state of facts on which the other decides that the treasury is not liable. It is impossible that these contradictory decisions can both be right.

The act of 1845 prescribes the condition upon the performance of

which, and only upon such performance, a suit will lie for overpaid duties. That condition is, the making of a legal protest within the proper time. The policy of the act is very clear. It is noticed by Chief Justice Taney, in the following words: "Now the act of February 26, 1845, in express terms, provides, that no action of this kind shall be maintained against a collector, 'unless the said protest was made in writing, and signed by the claimant at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof.'

"It is not, therefore, sufficient to object to the payment of any particular duty or amount of duty, and to protest in writing against it. The claimant must do more. He must set forth in his protest the grounds upon which he objects, distinctly and specifically. And these latter words are too emphatic to be regarded as mere surplusage, or to be overlooked in the construction of this law. The object of this provision is obvious. In the multitude of collection offices in the United States, and the changes which so frequently take place in the officers, mistakes and oversights will sometimes take place, and irregularities in the assessment of duties. And the object of this provision is to prevent a party from taking advantage of such objections when it is too late to correct them, and to compel him to disclose the grounds of his objection at the time when he makes his protest. The case before the court strikingly exemplifies the policy of this provision. One of the objections is, that the merchant appraisers did not actually inspect the pimento. It was not actually looked at and inspected by these appraisers, because there was no controversy about its quality. The consignees had notice and appeared before the merchant appraisers, and did not suggest that there was any defect in the quality which would lower the value, nor express a wish to have it inspected. They offered to prove that it was bought for the price at which it was invoiced, and that such was then the market price at the place where it was purchased. The appraisers were satisfied that it was bought at the price stated, but were of opinion that the price was lower than its market value in the principal markets of the island, and appraised its dutiable value accordingly.

"There is not the slightest reason to suppose that their assessment would have been in any degree influenced or changed by the actual inspection of the article. And if this objection had been stated in the protest, the error could have been immediately corrected before the duties were exacted; but it is now too late. And if this oversight be fatal to this appraisement, and renders it invalid, then the public lose not only the enhanced duties to which the pimento was liable, but also the additional or penal duty, which was the consequence of the merchant appraisal. The same may be said of the other grounds of objection above mentioned. If they had been set forth in the protest as the grounds of objection, and had been deemed tenable by the administrative department, the errors could have been corrected without the expense of litigation, and the duties which (the) law imposes secured to the public. And it is for this purpose that the act of 1845 requires the grounds of objection to be distinctly and specifically set forth in the protest. For this suit, although in form against the col-

lector for doing an unlawful act, is, in truth and substantially, a suit against the United States."—(Mason & Tullis *vs.* Kane, above cited.)

That opinion shows very clearly that the said act of 1845 is founded in sound policy. But whether it be so or not, no court can repeal it. Whilst it is in force it must be obeyed.

The only argument in the present case made by the claimants that appears to me to require an answer is, that this suit is not against the collector, but is against the United States. That argument admits of a short and conclusive answer. It is this: The law is settled by said decision of the United States court, that a suit against the collector for overcharged duties is, in truth, a suit against the United States. So that, according to that decision, which is certainly correct, the mere fact that this suit is against the United States, and not against the collector, is no reason that the suit should be sustained.

I must be permitted to repeat here what was said by me in Sturges, Bennet & Co. *vs.* The United States, namely, that the Supreme Court of the United States has decided that duties paid without a legal protest are not illegally exacted.—(Lawrence *vs.* Caswell, 13 Howard, 488, 496.)

When the claimants contend that the duties in question ought not to be retained in the treasury, they forget that those duties are so retained, not for the money involved, but in obedience to the statute of 1845, which Congress, for wise purposes, has thought proper to enact. They forget that, as regards the collection of duties on imports, Congress has the right to prescribe, by law, what rules it thinks proper; and that all persons who choose to import goods subject to duty, must conform to the rules which the law prescribes.

My opinion, therefore, is, that the petition shows no ground for relief.

DAVID WOOD *vs.* THE UNITED STATES.

Dissenting opinion delivered by Blackford, J.

This is a suit for overcharged duties. The particulars of the claim will sufficiently appear from the following extract from the petition:

"Your petitioner respectfully represents, that during the years 1847, 1848, 1849, 1850, and 1851, he imported into the United States certain quantities of liquors in casks, on which importations duties were imposed and paid by him to the United States, not only on the value of the quantity of liquor ascertained by guage to be contained in the said casks when imported, but also on the value of the quantity of liquor which had leaked out of said casks on the voyage of importation, which was lost—which did not exist at the time when the duty was imposed—which was not and could not be imported into the United States. Your petitioner claims a return of the moneys exacted from him as import duties on such leakage or non-imported liquors."

There is no allegation in the petition that any objection whatver was made to the payment of the said duties.

No evidence has been taken in the case; and the only question now before the court is, whether the petition shows a good cause of action. The decision of a majority of the court is, that the petition is sufficient. From that decision I dissent. The ground of my dissent is, that the duties in question were paid without objection. The dissenting opinions heretofore delivered by me in the cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States, are referred to as a part of this opinion. In the examination of those cases, I became entirely satisfied that the act of Congress of 1845, cited and relied on by me, was a bar to the claims; and as I consider that act to be a bar in those cases, I, of course, consider it to be a bar in this case.

Since the judgment of the majority of the court in the present case was rendered, I have met with a decision of the district court of the United States for the eastern district of Pennsylvania, which clearly shows that, even *before the act of* 1845, overcharged duties paid without objection could not be recovered back from the United States. Such payments made without objection are what the law denominates voluntary payments; and the law is well setted that money so paid cannot be recovered back. This principle not only applies to the present case, but is also applicable to the aforesaid cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States. The decision of the district court of the United States, above alluded to, is as follows:

An action was brought by the United States against Clement & Newman on a custom-house bond, dated 30th of June, 1841, conditioned for the payment of $793, that sum being part of the duties charged on an invoice of molasses imported by the defendants from Cuba into Philadelphia. The defendants claimed, among other things, a set-off of $345 22, being an alleged overcharge of duties previously paid by them. Mr. Watts, the district attorney, said in his argument that though the amount claimed there was small, the principle involved the restoration of an immense sum—not only fifteen or twenty thousand dollars, before paid by those defendants, but millions to other importers throughout the United States, paid by them voluntarily and without protest. * * * * * To the second credit the defendants ask for, we reply, first, that is covered by the same objections as the other; and, second, that the duties on which it is founded were paid voluntarily, and could not be recovered by the defendants, they having given no proof of compulsion or protest. Mr. Cadwalader, for the defendants, said: Both our claims for credit or set-off rest on these reasons, but the second is met by the additional objection that it was a voluntary payment without protest, and is therefore not recoverable against the United States. We reply that there is evidence of a protest to go to the jury, and that it was not a voluntary payment. It was required as a preliminary to entry, and was exacted *colore officii*, and is therefore not voluntary, and may be admitted as a set-off. The judge (27th of March, 1843) charged the jury as follows:

"If the jury believe that the value of the sugar or molasses embraces all costs and charges at the place of exportation, including the costs of hogsheads, barrels, boxes, &c., necessary to enable the parties to export it, then it will be unnecessary further to consider the question; should they think otherwise, then a new question arises for their consideration, and that is, were the duties on this shipment paid voluntarily and without objection, in consequence of the parties mistaking the law; if they were so paid, they cannot be recovered back, or deducted from the claim of the United States. It has been argued that a payment to a public officer cannot be considered as a voluntary payment, as he holds the compulsory power in his own hands. This may be so where the party paying objects, at the time of payment, to the propriety and legality of the charge. It is not necessary there should be a formal written protest, but there must be some objection, some notice that the claim is disputed, as the ground of objection or dispute may be removed or agreed to; but if paid without such objection, merely on a mistaken construction of the law, it is binding, and cannot be recovered back, or set-off against another demand. Was there any such notice or objection by the defendants at the time of payment? The only evidence on their part is that of Mr. Newman, who says there was no formal protest, but Mr. Clement informed him there was a mistake in calculating the duties, and that he (Mr. Clement) had been talking to Mr. Kern about it. Mr. Kern, who was a deputy collector, is since deceased; his testimony was not taken in his lifetime, and no witness is produced who heard the conversation. On the other side, Mr. Howell, deputy collector; Mr. Martin, the cashier; Mr. Bell, the ascertaining clerk; and Mr. McAdam, the bond clerk, have all been examined, and each of them say they never heard of any complaint by the defendant; and Mr. Howell states, that if such a complaint had been made, it would have been within his peculiar duty to examine it; but he knows of none. Still, this is a question of fact for the jury, and it is their province to decide it, the burden of proof being on the defendants. If you are satisfied that a duty was charged on the boxes, or hogsheads, over and above the value of the sugar, or molasses, at the time and place of exportation, and that such excess was paid by the defendants, they at the same time protesting or complaining against the justness or legality of the demand, then they are entitled to deduct the amount of such excess from the sum claimed in this suit. If, however, you believe that no excess was charged, or, if charged, that it was paid voluntarily, and without complaint, it is binding on the defendants, and they will not be entitled to the deduction." Verdict for the plaintiffs.—(United States *vs.* Clement & Newman, Crabbe's Reports, 499 to 515.)

In the case just referred to, as before stated, the United States were the plaintiffs, and Clement & Newman the defendants. The defendants claimed as a set-off a certain sum as having been paid for overcharged duties. The court decided, in 1843, that if the duties had been paid without objection, the payment was voluntary, and could not be recovered back from the United States. That was the law, as said case decides, after the act of Congress of 1839, and before the act of 1845, relative to overcharged duties. When that decision was

made, a verbal objection made at the time of payment was sufficient to enable the party to recover back from the United States, by way of set-off, overcharged duties. But by the act of 1845 no such recovery can be had, unless the objection was made in writing, and the grounds of the objection stated.

The abovementioned case of the United States *vs.* Clement & Newman was decided by a court of the United States, in which case the government of the United States was itself a party. The decision is entitled to great respect, and I cite it for the purpose of showing that, independently of the act of 1845, there is no foundation for the present claim, as described in the petition. That decision is in direct opposition to the judgment of the majority of the court in the present case.

The above are my reasons, in addition to those given in the cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States, for my dissent, in the present case, from the judgment of the court.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 168.

ERNEST FIEDLER.

[To accompany bills H. R. C. C. 20 and S. 440.]

JANUARY 30, 1856.

Mr. BISHOP, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom were referred the bill of the Senate (No. 440) entitled, "An act for the relief of Ernest Fiedler," and the bill of the House (H. R. C. C., No. 20,) for the relief of Earnest Fiedler, report:

That they have carefully considered the above described bills and are of the opinion that they ought not to pass. The opinion of the committee is so well expressed in the dissenting opinion of Judge Blackford, of the Court of Claims, upon these bills, that they adopt it and make it a part of this report.

ERNEST FIEDLER *vs.* THE UNITED STATES.

Dissenting opinion by Judge Blackford.

Suit for overpaid duties.

I dissent from the final judgment rendered in this case by a majority of the court in favor of the claimant.

As to the duties on the imports by the St. James, Victoria, and Northumberland, one of the witnesses, Jacquelin, says there were protests in writing, but says nothing as to the forms of the protests. Another witness, Griswold, says there is on the entries in those three cases "a protest in writing, purporting to be signed by the petitioner, in which the petitioner protests against paying twenty per cent., and claims that it should be ten per cent." The objection to this evidence is, 1. That copies of the protests should have been produced to this court. 2. That the act of Congress of 1845 requires that the protest shall state "*distinctly and specifically the grounds of objection.*" (5 Stat. at Large, 727.) The saying that the duty should not be twenty but ten per cent. is merely stating a conclusion of law. There is no proof, therefore, of a legal protest in either of those three cases; and that is the ground of my dissent in those cases.

As to the duties on the imports by the other vessels—namely, Mediator, Hendrick Hudson, Westminster, Sir Robert Peel, Devonshire, Southampton and Patrick Henry—the payments were made without any objection whatever, either written or verbal. That is the ground of my dissent in the last named cases.

The dissenting opinions heretofore delivered by me in the cases of Sturges, Bennet & Co. *vs.* The United States, Spence & Reid *vs.* The United States, and Wood *vs.* The United States, are hereto appended, and referred to as a part of this opinion.

STURGES, BENNET & CO. *vs.* THE UNITED STATES.

The dissenting opinion was delivered by Judge Blackford.

I am obliged to dissent from the judgment of the court in this case.

The petition attached to this opinion shows the grounds of the claim. The duties sued for were collected during the years 1847, 1848, 1849, 1850, and 1851.

The petition, in my opinion, is defective, because it does not allege that any of the duties were paid *under protest.* The act of Congress of 1845, chapter 22, prohibits any suit against a collector for overpaid duties, if the payment was made without protest. That point is expressly decided by the circuit court of the United States for the Maryland district, at the April term, 1849, in Brune *vs.* Marriott. In that case the protest was not made until *after* some of the duties were paid, and the decision was, that for such of the duties there could be no recovery. The language of the court is as follows: "The remaining question is, what duties were paid under protest, within the meaning of the act of 1845? That act requires that the protest shall be made in writing, signed by the claimant, at or before the payment of the duties, and set forth, distinctly and specifically, the grounds of objection. The protest of April 9, 1847, cannot apply to the payments previously made, and the plaintiff is not entitled to recover them. But it is sufficient to cover all subsequent payments," &c.

If there has been a protest the suit is allowed, as the statute expressly says, in order "to ascertain and try the legality and validity of such demand and payment of duties." I consider that statute to be as applicable to a suit in this court, against the government for over paid duties, as it is to a suit for that cause in any other court against the collector. The object of both suits is the same, namely, to ascertain and try the legality and validity of the demand and payment of duties alleged to have been overpaid. If such demand and payment of duties were legal and valid, the importer cannot, in a court professing to be governed by legal principles, recover those duties, either from the collector or from the government. That appears to me to be a clear proposition. Congress has thought proper, by the law of 1845, to prescribe a certain rule for the collector and importer relative to the collection of duties; and whilst the law is in force, the rule must be complied with. The rule is that if the importer wishes to object to the amount of duty charged, the objection must be made at or before the payment of the duty. If no objection be made within the time limited by law, the demand and payment of the duty must be considered legal and valid.

It will be observed that the statute of 1845, which prohibits any suit for overpaid duties, unless there has been a sufficient protest,

applies to duties of every description, without exception.—(5 Stat. at Large, 727.) The effect of this statute relative to the protest is clearly stated in an opinion delivered by Chief Justice Taney in 1849. His language is as follows: "The protest is not required to be made on or before the payment of what are called the estimated duties. For this payment is necessarily regulated by the invoice quantity, as well as the invoice price. The importer cannot, at that time, know whether there has been any loss by leakage; nor can he know, after it has been ascertained by the weigher and gauger, whether the collector will exact duties upon the amount stated in the invoice.

"The payment is legally made when the duties are finally determined, and the amount assessed by the collector; and a protest before or at that time is sufficient notice, as it warns the collector, before he renders his account to the Treasury Department, that he will be held personally responsible if the portion disputed is not legally due, and that the claimant means to assert his right in a court of justice.

"The payment of the money upon the estimated duties is rather in the nature of a pledge or deposite than a payment; for it remains in the hands of the proper officer, subject to the final assessment of the duties; and if more has been paid than is due, (which is most commonly the case,) the overplus belongs to the importer, and is returned to him."—(Brune *vs.* Marriott, before cited) The Supreme Court affirmed that judgment, using, as to the protest, the following language: "But where the duties had not been closed up in any cases, when the written protest, in April, was filed—though the preliminary payment of the estimated duties had taken place—the court justly considered the protest valid. Because, till the final adjustment, the money remains in the hands of the collector, and is not accounted for with the government, and more may be necessary to be paid by the importer."—(Marriott *vs.* Brune, 9 How., 619, 636.)

The law is therefore settled, that under the aforesaid statute of 1845 the importer is not required to make his protest until after the weigher or gauger has made his return, and the importer has had a full opportunity to know what that return is, and for what sum he is legally chargeable. That being the law, it is clear that there can be no hardship or injustice in requiring the protest. But, on the other hand, if at any distance of time after duties have been paid without objection, and with a full opportunity of knowing the facts, the United States are to be subject to be called upon for alleged overpaid duties, there will be no end to the evils that will ensue.

The language of the Supreme Court of the United States in 1851, with respect to the question now under consideration, is as follows: "But it is proper to say, in order that the opinion of the court may not be misunderstood, that when we speak of duties illegally exacted, the court mean to confine the opinion to cases like the present, in which the duty demanded was paid under protest, stating specially the ground of objection. Where no such protest is made, the duties are not illegally exacted, in the legal sense of the term; for the law has confided to the Secretary of the Treasury the power of deciding, in the first instance, upon the amount of duties due on the importation. And if the party acquiesces, and does not, by his protest, ap-

peal to the judicial tribunals, the duty paid is not illegally exacted, but is paid in obedience to the decision of the tribunal to which the law has confided the power of deciding the question.

"Money is often paid under the decision of an inferior court, without appeal, upon the construction of a law which is afterwards, in some other case, in a higher and superior court, determined to have been an erroneous construction But money thus paid is not illegally exacted. Nor are duties illegally exacted where they are paid under the decision of the collector, sanctioned by the Secretary of the Treasury, and without appealing from that decision to the judicial tribunals by a proper and legal protest. Nor are they within the principle decided in the case before us."—(Lawrence *vs.* Caswell, 13 Howard, 488, 496.) That is the unanimous opinion o fthe highest judicial tribunal in the United States, on the precise question now before us. It is the opinion of that court on the meaning of the act of Congress of 1845, before referred to. That opinion is, that duties paid *without protest*, as the duties in the case before us were paid, are not illegally exacted. And surely, if the duties now sued for were not illegally exacted, that is, if the collection of those duties was lawful, the claimants can have no right, in a court of justice, to recover them back, either from the collector or from the government.

My opinion is, therefore, that the petition shows no ground for relief.

SPENCE & REID, CONSIGNEE AGENTS OF MASON & TULLIS, *vs.* THE UNITED STATES.

[The petition of the claimants is hereto attached.]

Dissenting opinion delivered by Judge Blackford.

I dissent from that part of the judgment in this case which sustains the present suit as to certain overcharged duties.

The duties in question were paid to the collector without a written protest setting forth the grounds of objection, and were afterwards paid by the collector into the treasury of the United States.

The decision of the court is, that duties paid without such protest may be recovered back by a suit in this court. That decision is, in my opinion, contrary to the act of Congress of 1845, chapter 22.

The dissenting opinions delivered by me in the cases of Sturges, Bennet & Co. *vs.* The United States, and of Beatty *vs.* The United States, are hereto attached and made part of this opinion.

Mason & Tullis, for whose use this suit is brought, sued the collector in Baltimore for overcharged duties on the same pimento mentioned in the present petition. The circuit court of the United States decided in that case that the suit was, in substance, a suit against the United States, and that "*the money was in the treasury, and must be paid from the treasury if the plaintiff recover.*" They also decided that the suit would not lie, because there was no legal process.—(Mason & Tullis *vs.* Kane, circuit court of the United States for the Maryland

district, April term, 1851.) That decision is in direct opposition to the present decision of this court in substantially the same case. The consequence of the judgment in this case is as follows: A merchant sues a collector in a circuit court of the United States for overcharged duties. The effect of the suit, if successful, is to obtain from the treasury of the United States the amount of those duties. But the suit fails for *the want of a legal protest*. The same merchant then turns round and sues the United States, in the Court of Claims, for the same duties, and recovers *without such protest*. One court decides that the treasury of the United States is liable upon the same state of facts on which the other decides that the treasury is not liable. It is impossible that these contradictory decisions can both be right.

The act of 1845 prescribes the condition upon the performance of which, and only upon such performance, a suit will lie for overpaid duties. That condition is the making of a legal protest within the proper time. The policy of the act is very clear. It is noticed by Chief Justice Taney, in the following words: "Now the act of February 26, 1845, in express terms, provides that no action of this kind shall be maintained against a collector, 'unless the said protest was made in writing, and signed by the claimant at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof.'

"It is not, therefore, sufficient to object to the payment of any particular duty or amount of duty, and to protest in writing against it. The claimant must do more. He must set forth in his protest the grounds upon which he objects, distinctly and specifically. And these latter words are too emphatic to be regarded as mere surplusage, or to be overlooked in the construction of this law. The object of this provision is obvious. In the multitude of collection offices in the United States, and the changes which so frequently take place in the officers, mistakes and oversights will sometimes take place, and irregularities in the assessment of duties. And the object of this provision is to prevent a party from taking advantage of such objections when it is too late to correct them, and to compel him to disclose the grounds of his objection at the time when he makes his protest. The case before the court strikingly exemplifies the policy of this provision. One of the objections is, that the merchant appraisers did not actually inspect the pimento. It was not actually looked at and inspected by these appraisers, because there was no controversy about its quality. The consignees had notice and appeared before the merchant appraisers, and did not suggest that there was any defect in the quality which would lower the value, nor express a wish to have it inspected. They offered to prove that it was bought for the price at which it was invoiced, and that such was then the market price at the place where it was purchased. The appraisers were satisfied that it was bought at the price stated, but were of opinion that the price was lower than its market value in the principal markets of the island, and appraised its dutiable value accordingly.

"There is not the slightest reason to suppose that their assessment would have been, in any degree, influenced or changed by the actual inspection of the article. And if this objection had been stated in

the protest, the error could have been immediately corrected before the duties were exacted ; but it is now too late. And if this oversight be fatal to this appraisement, and renders it invalid, then the public lose not only the enhanced duties to which the pimento was liable, but also the additional or penal duty, which was the consequence of the merchant appraisal. The same may be said of the other grounds of objection above mentioned. If they had been set forth in the protest as the grounds of objection, and had been deemed tenable by the administrative department, the errors could have been corrected without the expense of litigation, and the duties which (the) law imposes secured to the public. And it is for this purpose that the act of 1845 requires the grounds of objection to be distinctly and specifically set forth in the protest. For this suit, although in form against the collector for doing an unlawful act, is, in truth and substantially, a suit against the United States."—(Mason & Tullis *vs.* Kane, above cited.)

That opinion shows very clearly that the said act of 1845 is founded in sound policy. But whether it be so or not, no court can repeal it. Whilst it is in force it must be obeyed.

The only argument in the present case made by the claimant that appears to me to require an answer, is, that this suit is not against the collector, but is against the United States. That argument admits of a short and conclusive answer. It is this: The law is settled by said decision of the United States court, that a suit against the collector for overcharged duties is, in truth, a suit against the United States. So that, according to that decision, which is certainly correct, the mere fact that this suit is against the United States, and not against the collector, is no reason that the suit should be sustained.

I must be permitted to repeat here, what was said by me in Sturges, Bennet & Co. *vs.* The United States, namely, that the Supreme Court of the United States has decided that duties paid without a legal protest are not illegally exacted.—(Lawrence *vs.* Caswell, 13 Howard, 488, 496.)

When the claimants contend that the duties in question ought not to be retained in the treasury, they forget that those duties are so retained, not for the money involved, but in obedience to the statute of 1845, which Congress, for wise purposes, has thought proper to enact. They forget that, as regards the collection of duties on imports, Congress has the right to prescribe, by law, what rules it thinks proper; and that all persons who choose to import goods subject to duty, must conform to the rules which the law prescribes.

My opinion, therefore, is, that the petition shows no ground for relief.

DAVID WOOD *vs.* THE UNITED STATES.

Dissenting opinion delivered by Blackford, J.

This is a suit for overcharged duties. The particulars of the claim will sufficiently appear from the following extract from the petition:

"Your petitioner respectfully represents, that during the years

1847, 1848, 1849, 1850, and 1851, he imported into the United States certain quantities of liquors in casks, on which importations duties were imposed and paid by him to the United States, not only on the value of the quantity of liquor ascertained by gauge to be contained in the said casks when imported, but also on the value of the quantity of liquor which had leaked out of said casks on the voyage of importation, which was lost—which did not exist at the time when the duty was imposed—which was not and could not be imported into the United States Your petitioner claims a return of the moneys exacted from him as import duties on such leakage or non-imported liquors."

There is no allegation in the petition that any objection whatever was made to the payment of the said duties.

No evidence has been taken in the case; and the only question now before the court is, whether the petition shows a good cause of action. The decision of a majority of the court is, that the petition is sufficient. From that decision I dissent. The ground of my dissent is, that the duties in question were paid without objection. The dissenting opinions heretofore delivered by me in the cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States, are referred to as a part of this opinion. In the examination of those cases, I became entirely satisfied that the act of Congress of 1845, cited and relied on by me, was a bar to the claims; and as I consider that act to be a bar in those cases, I, of course, consider it to be a bar in this case.

Since the judgment of the majority of the court in the present case was rendered, I have met with a decision of the district court of the United States for the eastern district of Pennsylvania, which clearly shows that, even *before the act of* 1855, overcharged duties paid without objection could not be recovered back from the United States. Such payments made without objection are what the law denominates voluntary payments; and the law is well settled that money so paid cannot be recovered back. This principle not only applies to the present case, but is also applicable to the aforesaid cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States. The decision of the district court of the United States, above alluded to, is as follows:

An action was brought by the United States against Clement & Newman on a custom-house bond, dated 30th June, 1841, conditioned for the payment of $793, that sum being part of the duties charged on an invoice of molasses imported by the defendants from Cuba into Philadelphia. The defendants claimed, among other things, a set-off of $345 22, being an alleged overcharge of duties previously paid by them. Mr. Watts, the district attorney, said in his argument that though the amount claimed there was small, the principle involved the restoration of an immense sum—not only fifteen or twenty thousand dollars, before paid by those defendants, but millions to other importers throughout the United States, paid by them voluntarily and without protest. * * * * * To the second credit the defendants ask for, we reply, first, that it is covered by the same objec-

tions as the other; and, second, that the duties on which it is founded were paid voluntarily, and could not be recovered by the defendants, they having given no proof of compulsion or protest. Mr. Cadwalader, for the defendants, said: Both our claims, for credit or set-off, rest on these reasons, but the second is met by the additional objection that it was a voluntary payment without protest, and is therefore not recoverable against the United States. We reply that there is evidence of a protest to go to the jury, and that it was not a voluntary payment. It was required as a preliminary to entry, and was exacted *colore officii*, and is therefore not voluntary, and may be admitted as a set-off. The judge (27th of March, 1843,) charged the jury as follows:

"If the jury believe that the value of the sugar or molasses embraces all costs and charges at the place of exportation, including the costs of hogsheads, barrels, boxes, &c., necessary to enable the parties to export it, then it will be unnecessary further to consider the question; should they think otherwise, then a new question arises for their consideration, and that is, were the duties on this shipment paid voluntarily and without objection, in consequence of the parties mistaking the law; if they were so paid, they cannot be recovered back, or deducted from the claim of the United States. It has been argued that a payment to a public officer cannot be considered as a voluntary payment, as he holds the compulsory power in his own hands. This may be so, where the party paying objects, at the time of payment, to the propriety and legality of the charge. It is not necessary there should be a formal written protest, but there must be some objection, some notice that the claim is disputed, as the ground of objection or dispute may be removed or agreed to; but if paid without such objection, merely on a mistaken construction of the law, it is binding, and cannot be recovered back, or set off against another demand. Was there any such notice or objection by the defendants at the time of payment? The only evidence on their part is that of Mr. Newman, who says there was no formal protest, but Mr. Clement informed him there was a mistake in calculating the duties, and that he (Mr. Clement) had been talking to Mr. Kern about it. Mr. Kern, who was a deputy collector, is since deceased; his testimony was not taken in his lifetime, and no witness is produced who heard the conversation. On the other side, Mr. Howell, deputy collector; Mr. Martin, the cashier; Mr. Bell, the ascertaining clerk; and Mr. McAdam, the bond clerk, have all been examined, and each of them say they never heard of any complaint by the defendant; and Mr. Howell states, that if such a complaint had been made, it would have been within his peculiar duty to examine it; but he knows of none. Still, this is a question of fact for the jury, and it is their province to decide it, the burden of proof being on the defendants. If you are satisfied that a duty was charged on the boxes, or hogsheads, over and above the value of the sugar, or molasses, at the time and place of exportation, and that such excess was paid by the defendants, they at the same time protesting or complaining against the justness or legality of the demand, then they are entitled to deduct the amount of such excess from the sum claimed in this suit. If, however, you believe that no

excess was charged, or, if charged, that it was paid voluntarily, and without complaint, it is binding on the defendants, and they will not be entitled to the deduction." Verdict for the plaintiffs.—(United States *vs.* Clement & Newman, Crabbe's Reports, 499 to 515.)

In the case just referred to, as before stated, the United States were the plaintiffs, and Clement & Newman the defendants. The defendants claimed, as a set-off, a certain sum as having been paid for overcharged duties. The court decided, in 1843, that if the duties had been paid without objection, the payment was voluntary, and could not be recovered back from the United States. That was the law, as said case decides, after the act of Congress of 1839, and before the act of 1845, relative to overcharged duties. When that decision was made, a verbal objection made at the time of payment was sufficient to enable the party to recover back from the United States, by way of set-off, overcharged duties. But by the act of 1845 no such recovery can be had, unless the objection was made in writing, and the grounds of the objection stated.

The above mentioned case of the United States *vs.* Clement & Newman was decided by a court of the United States, in which case the government of the United States was itself a party. The decision is entitled to great respect, and I cite it for the purpose of showing that, independently of the act of 1845, there is no foundation for the present claim as described in the petition. That decision is in direct opposition to the judgment of the majority of the court in the present case.

The above are my reasons, in addition to those given in the cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States, for my dissent, in the present case, from the judgment of the court.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 169.

STURGES, BENNET & CO.

[To accompany bills H. R. C. C. No. 18 and S. 441.]

JANUARY 30, 1857.

Mr. BISHOP, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the bill of the Senate No. 441, entitled "An act for the relief of Sturges, Bennet and Company," and the bill of the House (H. R. C. C. No. 18) for the relief of Sturges, Bennet and Company, report:

That they have carefully considered the above bills, and are of the opinion that they ought not to pass. The opinion of the committee is so well expressed in the dissenting opinion of Judge Blackford, of the Court of Claims, upon the bills that they adopt said opinion, and make it a part of this report.

STURGES, BENNET & CO. *vs.* UNITED STATES.

The dissenting opinion was delivered by Judge Blackford.

I am obliged to dissent from the judgment of the court in this case.

The petition attached to this opinion shows the grounds of the claim. The duties sued for were collected during the years 1847, 1848, 1849, 1850, and 1851.

The petition, in my opinion, is defective, because it does not allege that any of the duties were paid *under protest*. The act of Congress of 1845, chapter 22, prohibits any suit against a collector for overpaid duties, if the payment was made without protest. That point is expressly decided by the circuit court of the United States for the Maryland district, at the April term, 1849, in Brune *vs.* Marriott. In that case the protest was not made until *after* some of the duties were paid, and the decision was, that for such of the duties there could be no recovery. The language of the court is as follows: "The remaining question is, what duties were paid under protest within the meaning of the act of 1845? That act requires that the protest shall be made in writing, signed by the claimant, at or before the payment of the duties, and set forth, distinctly and specifically, the grounds of objection. The protest of April 9, 1847, cannot apply to the payments previously made, and the plaintiff is not entitled to recover them. But it is sufficient to cover all subsequent payments," &c.

If there has been a protest, the suit is allowed, as the statute expressly says, in order "to ascertain and try the legality and validity of such demand and payment of duties." I consider that statute to be as applicable to a suit in this court against the government for overpaid duties as it is to a suit for that cause in any other court against the collector. The object of both suits is the same—namely, to ascertain and try the legality and validity of the demand and payment of duties alleged to have been over paid. If such demand and payment of duties were legal and valid, the importer cannot, in a court professing to be governed by legal principles, recover those duties, either from the collector or from the government. That appears to me to be a clear proposition. Congress has thought proper, by the law of 1845, to prescribe a certain rule for the collector and importer relative to the collection of duties; and whilst the law is in force that rule must be complied with. The rule is, that if the importer wishes to object to the amount of duty charged, the objection must be made at or before the payment of the duty. If no objection be made within the time limited by law, the demand and payment of the duty must be considered legal and valid.

It will be observed that the statute of 1845, which prohibits any suit for overpaid duties, unless there has been a sufficient protest, applies to duties of every description, without exception.—(5 Stat. at Large, 727.) The effect of this statute relative to the protest is clearly stated in an opinion delivered by Chief Justice Taney in 1849. His language is as follows: "The protest is not required to be made on or before the payment of what are called the estimated duties. For this payment is necessarily regulated by the invoice quantity, as well as the invoice price. The importer cannot, at that time, know whether there has been any loss by leakage; nor can he know, after it has been ascertained by the weigher and gauger, whether the collector will exact duties upon the amount stated in the invoice.

"The payment is legally made when the duties are finally determined, and the amount assessed by the collector; and a protest before or at that time is sufficient notice, as it warns the collector, before he renders his account to the Treasury Department, that he will be held personally responsible if the portion disputed is not legally due, and that the claimant means to assert his right in a court of justice.

"The payment of the money upon the estimated duties is rather in the nature of a pledge or deposit than a payment. For it remains in the hands of the proper officer, subject to the final assessment of the duties; and if more has been paid than is due, (which is most commonly the case,) the overplus belongs to the importer, and is returned to him."—(Brune *vs.* Marriott, before cited.) The Supreme Court affirmed that judgment, using, as to the protest, the following language: "But where the duties had not been closed up in any cases, when the written protest, in April, was filed—though the preliminary payment of the estimated duties had taken place—the court justly considered the protest valid. Because, till the final adjustment, the money remains in the hands of the collector, and is not accounted for with the government, and more may be necessary to be paid by the importer.—(Marriott vs. Brune, 9 How., 619, 636.)

The law is therefore settled, that under the aforesaid statute of 1845 the importer is not required to make his protest until after the weigher or gauger has made his return, and the importer has had a full opportunity to know what that return is, and for what sum he is legally chargeable. That being the law, it is clear that there can be no hardship or injustice in requiring the protest. But, on the other hand, if at any distance of time after duties have been paid without objection, and with a full opportunity of knowing the facts, the United States are to be subject to be called upon for alleged overpaid duties, there will be no end to the evils that will ensue.

The language of the Supreme Court of the United States in 1851, with respect to the question now under consideration, is as follows: "But it is proper to say, in order that the opinion of the court may not be misunderstood, that when we speak of duties illegally exacted, the court mean to confine the opinion to cases like the present, in which the duty demanded was paid under protest, stating specially the ground of objection. Where no such protest is made, the duties are not illegally exacted, in the legal sense of the term; for the law has confided to the Secretary of the Treasury the power of deciding, in the first instance, upon the amount of duties due on the importation. And if the party acquiesces, and does not, by his protest, appeal to the judicial tribunals, the duty paid is not illegally exacted, but is paid in obedience to the decision of the tribunal to which the law has confided the power of deciding the question.

"Money is often paid under the decision of an inferior court, without appeal, upon the construction of a law which is afterwards, in some other case, in a higher and superior court determined to have been an erroneous construction. But money thus paid is not illegally exacted. Nor are duties illegally exacted where they are paid under the decision of the collector, sanctioned by the Secretary of the Treasury, and without appealing from that decision to the judicial tribunals by a proper and legal protest. Nor are they within the principle decided in the case before us."—(Lawrence *vs.* Caswell, 13 Howard, 488, 496.) That is the unanimous opinion of the highest judicial tribunal in the United States, on the precise question now before us. It is the opinion of that court on the meaning of the act of Congress of 1845, before referred to. That opinion is, that duties paid *without protest*, as the duties in the case before us were paid, are not illegally exacted. And, surely, if the duties now sued for were not illegally exacted—that is, if the collection of those duties was lawful—the claimants can have no right, in a court of justice, to recover them back, either from the collector or from the government.

My opinion is, therefore, that the petition shows no ground for relief.

STURGES, BENNET & CO. *vs.* THE UNITED STATES.

Judge Blackford's dissenting opinion:

Suit for overpaid duties.

I dissent from the final judgment rendered in this case by the majority of the court in favor of the claimants.

The ground of my dissent is, that the duties sued for were paid without protest.—(See act of Congress of 1845, 5 Stat. at Large, 727; Marriott *vs.* Brune, 9 Howard, 619, 636; Lawrence *vs.* Caswell, 13 Howard, 488, 496.)

The reasons for my dissent are given at length in the opinion heretofore delivered by me, in this case, on the question as to the validity of the petition; which opinion is hereto appended and made part of this opinion.

The dissenting opinions heretofore delivered by me in the cases of Beatty's Executor *vs.* The United States, Spence & Reid *vs.* The United States, and Wood *vs.* The United States, are also hereto appended, and referred to as a part of this opinion.

BEATTY'S EXECUTOR *vs.* THE UNITED STATES.

Dissenting opinion, delivered by Judge Blackford:

I dissent from the judgment of the court in this case.

The petition, which is attached to this opinion, does not allege that the duties sued for were paid under protest.

The only question, therefore, which need be considered is, Whether overpaid duties, paid without protest, can be recovered back by a suit in this court?

That question ought, in my opinion, to be decided in the negative.

The opinion on this subject, delivered by me a few days ago, in Sturges and others *vs.* The United States, is annexed to this opinion, and is to be considered a part of it.

The act of Congress of 1845, referred to in that opinion, after saying that nothing contained in the second section of the act of the 3d of March, 1839, "shall take away, or be construed to take away, or impair the right of any person or persons who have paid or shall hereafter pay money, as and for duties under protest, to any collector," &c., concludes as follows: "Nor shall any action be maintained against any collector to recover the amount of duties so paid under protest, unless the said protest was made in writing and signed by the claimant, at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof."—(5 Stat. at Large, 727.) In the opinion in Sturges and others *vs.* The United States, I stated that I considered that act of 1845 to be as applicable to a suit in this court, against the government for over paid duties, as it is to a suit for that cause, in any other court, against the collector. When that opinion was delivered, I was not aware that the principle just alluded to had been recognized by any of the courts; yet, as it appeared to me so perfectly clear, I did not hesitate to adopt it. But I have since found that the same doctrine—namely, that a suit against a collector for overpaid duties is, in substance, a suit against the United States—had been expressly

decided by the circuit court of the United States for the Maryland district. The following is the language of the court:

"For this suit, although in form against the collector for doing an unlawful act, is, in truth and substantially, a suit against the United States. The money is in the treasury, and must be paid from the treasury, if the plaintiff recover. And as the United States cannot be sued and made a defendant in a court of justice, without their consent, they have an undoubted right to annex to the privilege of suing them any conditions which they deem proper. And, in the exercise of this power, they have granted this privilege in the form of a suit against the collector, where duties are supposed to be overcharged, upon condition that the claimant, when he pays the money, shall give a written notice that he regards the demand as illegal, and means to contest the right of the United States in a court of justice; and stating also, at the same time, distinctly, the specific grounds upon which he objects. This is the condition upon which he is permitted to sue the collector, and thus to appeal from the administrative to the judicial department of the government. It is a condition precedent."—(Mason and Tullis *vs.* Kane, MSS.)

That opinion was delivered by Chief Justice Taney, and decides that a suit against the collector for overpaid duties is, in truth and substantially, a suit against the United States. And it also decides that such a suit cannot be sustained if the duties were paid without protest.

If that decision is correct, as it undoubtedly is, it shows conclusively that the suit now before this court, which is a suit against the United States for overpaid duties, paid without protest, is forbidden by the act of 1845, and, of course, cannot be sustained.

The claimant's main argument is, that his testator's money has been unlawfully obtained by the government, and that he has, therefore, a right to recover it back. The fallacy of that argument consists in assuming what is not true, namely, the unlawfulness of the collection of the money. The truth is, that the money, having been paid without protest, was lawfully received by the collector and by the government.

Congress, as a matter of policy, enacted the aforesaid act of 1845; and the Supreme Court of the United States have decided, as they were bound to decide, that, according to that act, duties paid without protest are not illegally exacted.—(Lawrence *vs.* Caswell, 13 Howard, 496.) The Court of Claims, like every other court, is bound by the law; and as the act of 1845 has forbidden any suit to be brought against the collector (which, it is decided, would be, in truth, a suit against the United States) for duties paid without protest, this court cannot, whilst that act is in force, sustain a suit against the government for duties so paid.

The act of 1845 fixes a reasonable time within which objections to the duties charged may be made, and says that if the objections are not made within the time the duties shall not be recovered back. The object of that act is to secure prompt and final settlements relative to the duties, whilst the facts can be easily ascertained, and to prevent the continual disputes and frauds which would be occasioned

by delay. The act appears to be founded on sound policy; but whether it is so or not, is a question for the consideration not of the courts but of the legislature.

I am of opinion, for the above reasons, that this suit for overpaid duties, paid without protest, cannot be sustained.

SPENCE & REID, CONSIGNEE AGENTS OF MASON & TULLIS, *vs.* THE UNITED STATES.

[The petition of the claimants is hereto attached.]

Dissenting opinion, delivered by Judge Blackford:

I dissent from that part of the judgment in this case which sustains the present suit as to certain overcharged duties.

The duties in question were paid to the collector without a written protest setting forth the grounds of objection, and were afterwards paid by the collector into the treasury of the United States.

The decision of the court is, that duties paid without such protest may be recovered back by a suit in this court. That decision is, in my opinion, contrary to the act of Congress of 1845, chapter 22.

The dissenting opinions delivered by me in the cases of Sturges, Bennet & Co. *vs.* The United States, and of Beatty *vs.* The United States, are hereto attached and made part of this opinion.

Mason & Tullis, for whose use this suit is brought, sued the collector in Baltimore for overcharged duties on the same pimento mentioned in the present petition. The circuit court of the United States decided in that case that the suit was, in substance, a suit against the United States; and that "*the money was in the treasury, and must be paid from the treasury, if the plaintiff recover.*" They also decided that the suit would not lie, because there was no legal protest.—(Mason & Tullis *vs.* Kane, circuit court of the United States for the Maryland district, April term, 1851.) That decision is in direct opposition to the present decision of this court is substantially the same case. The consequence of the judgment in this case is as follows: A merchant sues the collector in a circuit court of the United States for overcharged duties. The effect of the suit, if successful, is to obtain from the treasury of the United States the amount of those duties. But the suit fails for *the want of a legal protest.* The same merchant then turns round and sues the United States, in the Court of Claims, for the same duties, and recovers *without such protest.* One court decides that the treasury of the United States is liable upon the same state of facts on which the other decides that the treasury is not liable. It is impossible that these contradictory decisions can both be right.

The act of 1845 prescribes the condition upon the performance of which, and only upon such performance, a suit will lie for overpaid duties. That condition is, the making of a legal protest within the proper time. The policy of the act is very clear. It is noticed by

Chief Justice Taney, in the following words: "Now the act of February 26, 1845, in express terms, provides that no action of this kind shall be maintained against a collector, 'unless the said protest was made in writing, and signed by the claimant at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof.'

"It is not, therefore, sufficient to object to the payment of any particular duty or amount of duty, and to protest in writing against it. The claimant must do more. He must set forth in his protest the grounds upon which he objects, distinctly and specifically. And these latter words are too emphatic to be regarded as mere surplusage, or to be overlooked in the construction of this law. The object of this provision is obvious. In the multitude of collection offices in the United States, and the changes which so frequently take place in the officers, mistakes and oversights will sometimes take place, and irregularities in the assessment of duties. And the object of this provision is to prevent a party from taking advantage of such objection when it is too late to correct them, and to compel him to disclose the grounds of his objection at the time when he makes his protest. The case before the court strikingly exemplifies the policy of this provision. One of the objections is, that the merchant appraisers did not actually inspect the pimento. It was not actually looked at and inspected by these appraisers, because there was no controversy about its quality. The consignees had notice and appeared before the merchant appraisers, and did not suggest that there was any defect in the quality which would lower the value, nor express a wish to have it inspected. They offered to prove that it was bought for the price at which it was invoiced, and that such was then the market price at the place where it was purchased. The appraisers were satisfied that it was bought at the price stated, but were of opinion that the price was lower than its market value in the principle markets of the island, and appraised its dutiable value accordingly.

"There is not the slightest reason to suppose that their assessment would have been, in any degree, influenced or changed by the actual inspection of the article. And if this objection had been stated in the protest, the error could have been immediately corrected before the duties were exacted; but it is now too late. And if this oversight be fatal to this appraisement, and renders it invalid, then the public lose not only the enhanced duties to which the pimento was liable, but also the additional or penal duty which was the consequence of the merchant appraisal. The same may be said of the other grounds of objection above mentioned. If they had been set forth in the protest as the grounds of objection, and had been deemed tenable by the administrative department, the errors could have been corrected without the expense of litigation, and the duties which (the) law imposes secured to the public. And it is for this purpose that the act of 1845 requires the grounds of objection to be distinctly and specifically set forth in the protest. For this suit, although in form against the collector for doing an unlawful act, is, in truth and substantially, a suit against the United States."—(Mason & Tullis *vs.* Kane, above cited.)

That opinion shows very clearly that the said act of 1845 is founded in sound policy. But whether it be so or not, no court can repeal it. Whilst it is in force it must be obeyed.

The only argument in the present case made by the claimants that appears to me to require an answer, is, that this suit is not against the collector, but is against the United States. That argument admits of a short and conclusive answer. It is this: The law is settled by said decision of the United States court, that a suit against the collector for overcharged duties is, in truth, a suit against the United States. So that, according to that decision, which is certainly correct, the mere fact that this suit is against the United States, and not against the collector, is no reason that the suit should be sustained.

I must be permitted to repeat here what was said by me in Sturges, Bennet & Co. *vs.* The United States, namely, that the Supreme Court of the United States has decided that duties paid without a legal protest are not illegally exacted.—(Lawrence *vs.* Caswell, 13 Howard, 488, 496.)

When the claimants contend that the duties in question ought not to be retained in the treasury, they forget that those duties are so retained, not for the money involved, but in obedience to the statute of 1845, which Congress, for wise purposes, has thought proper to enact. They forget that, as regards the collection of duties on imports, Congress has the right to prescribe by law what rules it thinks proper; and that all persons who choose to import goods subject to duty must conform to the rules which the law prescribes.

My opinion, therefore, is, that the petition shows no ground for relief.

DAVID WOOD *vs.* THE UNITED STATES.

Dissenting opinion, delivered by Blackford, J.:

This is a suit for overcharged duties. The particulars of the claim will sufficiently appear from the following extract from the petition:

"Your petitioner respectfully represents, that during the years 1847, 1848, 1849, 1850, and 1851, he imported into the United States certain quantities of liquors in casks, on which importation duties were imposed and paid by him to the United States, not only on the value of the quantity of liquor ascertained by gauge to be contained in the said casks when imported, but also on the value of the quantity of liquor which had leaked out of said casks on the voyage of importation, which was lost—which did not exist at the time when the duty was imposed—which was not and could not be imported into the United States. Your petitioner claims a return of the moneys exacted from him as import duties on such leakage or non-imported liquors."

There is no allegation in the petition that any objection whatever was made to the payment of the said duties.

No evidence has been taken in the case; and the only question now before the court is, whether the petition shows a good cause of action. The decision of a majority of the court is, that the petition

is sufficient. From that decision I dissent. The ground of my dissent is, that the duties in question were paid without objection. The dissenting opinions heretofore delivered by me in the cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States, are referred to as a part of this opinion. In the examination of those cases, I became entirely satisfied that the act of Congress of 1845, cited and relied on by me, was a bar to the claims; and as I consider that act to be a bar in those cases, I, of course, consider it to be a bar in this case.

Since the judgment of the majority of the court in the present case was rendered, I have met with a decision of the district court of the United States for the eastern district of Pennsylvania, which clearly shows that, even *before the act of* 1845, overcharged duties paid without objection could not be recovered back from the United States. Such payments made without objection are what the law denominates voluntary payments; and the law is well settled that money so paid cannot be recovered back. This principle not only applies to the present case, but is also applicable to the aforesaid cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States. The decision of the district court of the United States, above alluded to, is as follows:

An action was brought by the United States against Clement & Newman on a custom-house bond, dated 30th of June 1841, conditioned for the payment of $793, that sum being part of the duties charged on an invoice of molasses imported by the defendants from Cuba into Philadelphia. The defendants claimed, among other things, a set-off of $345 22, being an alleged overcharge of duties, previously paid by them. Mr. Watts, the district attorney, said, in his argument, that though the amount claimed there was small, the principle involved the restoration of an immense sum—not only fifteen or twenty thousand dollars, before paid by those defendants, but millions to other importers throughout the United States, paid by them voluntarily and without protest. * * * * * To the second credit the defendants ask for, we reply, first, that is covered by the same objections as the other; and, second, that the duties on which it is founded were paid voluntarily, and could not be recovered by the defendants, they having given no proof of compulsion or protest. Mr. Cadwalader, for the defendants, said: Both our claims, for credit or set-off, rest on these reasons, but the second is met by the additional objection that it was a voluntary payment without protest, and is therefore not recoverable against the United States. We reply, that there is evidence of a protest to go to the jury, and that it was not a voluntary payment. It was required as a preliminary to entry, and was exacted *colore officii*, and is therefore not voluntary, and may be admitted as a set-off. The judge (27th of March, 1843) charged the jury as follows:

"If the jury believe that the value of the sugar or molasses embraces all costs and charges at the place of exportation, including the costs of hogsheads, barrels, boxes, &c., necessary to enable the parties

to export it, then it will be unnecessary further to consider the question; should they think otherwise, then a new question arises for their consideration, and that is, were the duties on this shipment paid voluntarily and without objection, in consequence of the parties mistaking the law; if they were so paid, they cannot be recovered back, or deducted from the claim of the United States. It has been argued that a payment to a public officer cannot be considered as a voluntary payment, as he holds the compulsory power in his own hands. This may be so, where the party paying objects, at the time of payment, to the propriety and legality of the charge. It is not necessary there should be a formal written protest, but there must be some objection, some notice that the claim is disputed, as the ground of objection or dispute may be removed or agreed to; but if paid without such objection, merely on a mistaken construction of the law, it is binding, and cannot be recovered back, or set off against another demand. Was there any such notice or objection by the defendants at the time of payment? The only evidence on their part is that of Mr. Newman, who says there was no formal protest, but Mr. Clement informed him there was a mistake in calculating the duties, and that he (Mr. Clement) had been talking to Mr. Kern about it. Mr. Kern, who was a deputy collector, is since deceased, his testimony was not taken in his lifetime, and no witness is produced who heard the conversation. On the other side, Mr. Howell, deputy collector; Mr. Martin, the cashier; Mr. Bell, the ascertaining clerk; and Mr. McAdam, the bond clerk, have all been examined, and each of them say they never heard of any complaint by the defendant; and Mr. Howell states, that if such a complaint had been made, it would have been within his peculiar duty to examine it; but he knows of none. Still this is a question of fact for the jury, and it is their province to decide it, the burden of proof being on the defendants. If you are satisfied that a duty was charged on the boxes, or hogsheads, over and above the value of the sugar, or molasses, at the time and place of exportation, and that such excess was paid by the defendants, they at the same time protesting or complaining against the justness or legality of the demand, then they are entitled to deduct the amount of such excess from the sum claimed in this suit. If, however, you believe that no excess was charged, or, if charged, that it was paid voluntarily, and without complaint, it is binding on the defendants, and they will not be entitled to the deduction. Verdict for the plaintiffs.—(United States *vs.* Clement & Newman, Crabbe's Reports, 499 to 515.)

In the case just referred to, as before stated, the United States were the plaintiffs, and Clement & Newman the defendants. The defendants claimed, as a set-off, a certain sum as having been paid for overcharged duties. The court decided in 1843 that if the duties had been paid without objection, the payment was voluntary, and could not be recovered back from the United States. That was the law, as said case decides, after the act of Congress of 1839, and before the act of 1845, relative to overcharged duties. When that decision was made, a verbal objection made at the time of payment was sufficient to enable the party to recover back from the United States, by way of set-off, overcharged duties. But by the act of 1845 no such recovery

can be had, unless the objection was made in writing, and the grounds of the objection stated.

The above-mentioned case of the United States *vs.* Clement & Newman was decided by a court of the United States, in which case the government of the United States was itself a party. The decision is entitled to great respect, and I cite it for the purpose of showing that, independently of the act of 1845, there is no foundation for the present claim as described in the petition. That decision is in direct opposition to the judgment of the majority of the court in the present case.

The above are my reasons, in addition to those given in the cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States, for my dissent, in the present case, from the judgment of the court.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 170.

HENRY AND FREDERICK W. MEYER.

[To accompany bill C. C. No. 22.]

JANUARY 30, 1857.

Mr. BISHOP, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the bill of the House (C. C. No. 22) entitled "A bill for the relief of Henry and Frederick W. Meyer, merchants of the city of New York," report:

That they have carefully considered the above described bill, and are of the opinion that it ought not to pass. The opinion of the committee is so well expressed in the dissenting opinion of Judge Blackford, of the Court of Claims, upon the bill, that they adopt said opinion, and make it a part of this report.

H. & F. W. MEYER *vs.* THE UNITED STATES.

Judge Blackford's dissenting opinion:

Suit for overpaid duties.

I dissent from the final judgment rendered in this case for the claimants.

The ground of my dissent is, that the duties sued for were paid without any objection whatever, either written or verbal. The payment was voluntary, and cannot be recovered back.—(See act of Congress of 1845, 5 Stat. at Large, 727; Marriott *vs.* Brune, 9 Howard, 619, 636; Lawrence *vs.* Caswell, 13 Howard, 488, 496.)

The dissenting opinions heretofore delivered by me in the cases of Sturges, Bennet & Co. *vs.* The United States, Spence & Reid *vs.* The United States, Beatty's Executor *vs.* The United States, and Wood *vs.* The United States, are hereto appended, and made part of this opinion.

STURGES, BENNET & CO. *vs.* THE UNITED STATES.

The dissenting opinion was delivered by Judge Blackford:

I am obliged to dissent from the judgment of the court in this case. The petition attached to this opinion shows the grounds of the claim.

The duties sued for were collected during the years 1847, 1848, 1849, 1850, and 1851.

The petition, in my opinion, is defective, because it does not allege that any of the duties were paid *under protest*. The act of Congress of 1845, chapter 22, prohibits any suit against a collector for overpaid duties, if the payment was made without protest. That point is expressly decided by the circuit court of the United States for the Maryland district, at the April term, 1849, in Brune *vs.* Marriott. In that case, the protest was not made until *after* some of the duties were paid, and the decision was, that for such of the duties there could be no recovery. The language of the court is as follows: "The remaining question is, what duties were paid under protest, within the meaning of the act of 1845? That act requires that the protest shall be made in writing, signed by the claimant, at or before the payment of the duties, and set forth, distinctly and specifically, the grounds of objection. The protest of April 9, 1847, cannot apply to the payments previously made, and the plaintiff is not entitled to recover them. But it is sufficient to cover all subsequent payments," &c.

If there has been a protest, the suit is allowed, as the statute expressly says, in order "to ascertain and try the legality and validity of such demand and payment of duties." I consider that statute to be as applicable to a suit in this court against the government for overpaid duties, as it is to a suit for that cause in any other court against the collector. The object of both suits is the same, namely, to ascertain and try the legality and validity of the demand and payment of duties alleged to have been overpaid. If such demand and payment of duties were legal and valid, the importer cannot, in a court professing to be governed by legal principles, recover those duties, either from the collector or from the government. That appears to me to be a clear proposition. Congress has thought proper, by the law of 1845, to prescribe a certain rule for the collector and importer relative to the collection of duties; and whilst the law is in force that rule must be complied with. The rule is, that if the importer wishes to object to the amount of duty charged, the objection must be made at or before the payment of the duty. If no objection be made within the time limited by law, the demand and payment of the duty must be considered legal and valid.

It will be observed that the statute of 1845, which prohibits any suit for overpaid duties, unless there has been a sufficient protest, applies to duties of every description without exception.—(5 Stat. at Large, 727.) The effect of this statute relative to the protest is clearly stated in an opinion delivered by Chief Justice Taney in 1749. His language is as follows: "The protest is not required to be made on or before the payment of what are called the estimated duties. For this payment is necessarily regulated by the invoice quantity, as well as the invoice price. The importer cannot, at that time, know whether there has been any loss by leakage; nor can he know, after it has been ascertained by the weigher and gauger, whether the collector will exact duties upon the amount stated in the invoice.

"The payment is legally made when the duties are finally deter-

mined, and the amount assessed by the collector; and a protest before or at that time is sufficient notice, as it warns the collector, before he renders his account to the Treasury Department, that he will be held personally responsible if the portion disputed is not legally due, and that the claimant means to assert his right in a court of justice.

"The payment of the money upon the estimated duties is rather in the nature of a pledge or deposite than a payment. For it remains in the hands of the proper officer, subject to the final assessment of the duties; and if more has been paid than is due, (which is most commonly the case,) the overplus belongs to the importer, and is returned to him." (Brune *vs.* Marriott, before cited.) The Supreme Court affirmed that judgment, using, as to the protest, the following language: "But where the duties had not been closed up in any cases, when the written protest in April was filed—though the preliminary payment of the estimated duties had taken place—the court justly considered the protest valid. Because, till the final adjustment, the money remains in the hands of the collector, and is not accounted for with the government, and more may be necessary to be paid by the importer." (Marriott *vs.* Brune, 9 How., 619, 636.)

The law is therefore settled, that under the aforesaid statute of 1845 the importer is not required to make his protest until after the weigher or gauger has made his return, and the importer has had a full opportunity to know what that return is, and for what sum he is legally chargeable. That being the law, it is clear that there can be no hardship or injustice in requiring the protest. But, on the other hand, if at any distance of time after duties have been paid without objection, and with a full opportunity of knowing the facts, the United States are to be subject to be called upon for alleged overpaid duties, there will be no end to the evils that will ensue.

The language of the Supreme Court of the United States in 1851, with respect to the question now under consideration, is as follows: "But it is proper to say, in order that the opinion of the court may not be misunderstood, that when we speak of duties illegally exacted, the court mean to confine the opinion to cases like the present, in which the duty demanded was paid under protest, stating specially the ground of objection. Where no such protest is made, the duties are not illegally exacted, in the legal sense of the term; for the law has confided to the Secretary of the Treasury the power of deciding, in the first instance, upon the amount of duties due on the importation. And if the party acquiesces, and does not, by his protest, appeal to the judicial tribunals, the duty paid is not illegally exacted, but is paid in obedience to the decision of the tribunal to which the law has confided the power of deciding the question.

"Money is often paid under the decision of an inferior court, without appeal, upon the construction of a law which is afterwards, in some other case, in a higher and superior court, determined to have been an erroneous construction. But money thus paid is not illegally exacted. Nor are duties illegally exacted where they are paid under the decision of the collector, sanctioned by the Secretary of the Treasury, and without appealing from that decision to the judicial tribunals by a proper and legal protest. Nor are they within the

principle decided in the case before us."—(Lawrence *vs.* Caswell, 13 Howard, 488, 496.) That is the unanimous opinion of the highest judicial tribunal in the United States on the precise question now before us. It is the opinion of that court on the meaning of the act of Congress of 1845, before referred to. That opinion is, that duties paid *without protest*, as the duties in the case before us were paid, are not illegally exacted. And, surely, if the duties now sued for were not illegally exacted, that is, if the collection of those duties was lawful, the claimants can have no right, in a court of justice, to recover them back, either from the collector or from the government.

My opinion is, therefore, that the petition shows no ground for relief.

SPENCE & REID, CONSIGNEE AGENTS OF MASON & TULLIS, *vs.* THE UNITED STATES.

[The petition of the claimants is hereto attached.]

Dissenting opinion, delivered by Judge Blackford:

I dissent from that part of the judgment in this case which sustains the present suit as to certain overcharged duties.

The duties in question were paid to the collector without a written protest setting forth the grounds of objection, and were afterwards paid by the collector into the treasury of the United States.

The decision of the court is, that duties paid without such protest may be recovered back by a suit in this court. That decision is, in my opinion, contrary to the act of Congress of 1845, chapter 22.

The dissenting opinions delivered by me in the cases of Sturges, Bennet & Co. *vs.* The United States, and of Beatty *vs.* The United States, are hereto attached and made part of this opinion.

Mason & Tullis, for whose use this suit is brought, sued the collector in Baltimore for overcharged duties on the same pimento mentioned in the present petition. The circuit court of the United States decided, in that case, that the suit was in substance a suit against the United States; and that "*the money was in the treasury, and must be paid from the treasury if the plaintiff recover.*" They also decided that the suit would not lie, because there was no legal protest.—(Mason & Tullis *vs.* Kane, circuit court of the United States for the Maryland district, April term, 1851.) That decision is in direct opposition to the present decision of this court in substantially the same case. The consequence of the judgment in this case is as follows: A merchant sues the collector in a circuit court of the United States for overcharged duties. The effect of the suit, if successful, is to obtain from the treasury of the United States the amount of those duties. But the suit fails for *the want of a legal protest.* The same merchant then turns round and sues the United States, in the Court of Claims, for the same duties, and recovers *without such protest.* One court decides that the treasury of the United States is liable upon the same state of facts on which the other decides that the treasury is not liable. It is impossible that these contradictory decisions can both be right.

The act of 1845 prescribes the condition, upon the performance of which, and only upon such performance, a suit will lie for overpaid duties. That condition is the making of a legal protest within the proper time. The policy of the act is very clear. It is noticed by Chief Justice Taney, in the following words: "Now, the act of February 26, 1845, in express terms, provides, that no action of this kind shall be maintained against a collector, 'unless the said protest was made in writing, and signed by the claimant, at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof.'

"It is not, therefore, sufficient to object to the payment of any particular duty or amount of duty, and to protest in writing against it. The claimant must do more. He must set forth in his protest the grounds upon which he objects, distinctly and specifically. And these latter words are too emphatic to be regarded as mere surplusage, or to be overlooked in the construction of this law. The object of this provision is obvious. In the multitude of collection offices in the United States, and the changes which so frequently take place in the officers, mistakes and oversights will sometimes take place and irregularities in the assessment of duties. And the object of this provision is to prevent a party from taking advantage of such objection when it is too late to correct them, and to compel him to disclose the grounds of his objection at the time when he makes his protest. The case before the court strikingly exemplifies the policy of this provision. One of the objections is, that the merchant appraisers did not actually inspect the pimento. It was not actually looked at and inspected by the appraisers, because there was no controversy about its quality. The consignees had notice and appeared before the merchant appraisers, and did not suggest that there was any defect in the quality which would lower the value, nor express a wish to have it inspected. They offered to prove that it was bought for the price at which it was invoiced, and that such was then the market price at the place where it was purchased. The appraisers were satisfied that it was bought at the price stated, but were of opinion that the price was lower than its market value in the principal markets of the island, and appraised its dutiable value accordingly.

"There is not the slightest reason to suppose that their assessment would have been, in any degree, influenced or changed by the actual inspection of the article. And if this objection had been stated in the protest, the error could have been immediately corrected before the duties were exacted; but it is now too late. And if this oversight be fatal to this appraisement, and renders it invalid, then the public lose, not only the enhanced duties to which the pimento was liable, but also the additional or penal duty which was the consequence of the merchant appraisal. The same may be said of the other grounds of objection above mentioned. If they had been set forth in the protest as the grounds of objection, and had been deemed tenable by the administrative department, the errors could have been corrected without the expense of litigation, and the duties which the law imposes secured to the public. And it is for this purpose that the act of 1845 requires the grounds of objection to be distinctly and specifically set

forth in the protest. For this suit, although in form against the collector for doing an unlawful act, is, in truth and substantially, a suit against the United States."—(Mason & Tullis *vs.* Kane, above cited.)

That opinion shows very clearly that the said act of 1845 is founded in sound policy. But whether it be so or not, no court can repeal it. Whilst it is in force it must be obeyed.

The only argument in the present case made by the claimants that appears to me to require an answer is, that this suit is not against the collector, but is against the United States. That argument admits of a short and conclusive answer. It is this: The law is settled by said decision of the United States court, that a suit against the collector for overcharged duties is, in truth, a suit against the United States. So that, according to that decision, which is certainly correct, the mere fact that this suit is against the United States, and not against the collector, is no reason that the suit should be sustained.

I must be permitted to repeat here, what was said by me in Sturges, Bennet & Co. *vs.* The United States, namely, that the Supreme Court of the United States has decided that duties paid without a legal protest are not illegally exacted.—(Lawrence *vs.* Caswell, 13 Howard, 488, 496.)

When the claimants contend that the duties in question ought not to be retained in the treasury, they forget that those duties are so retained, not for the money involved, but in obedience to the statute of 1845, which Congress, for wise purposes, has thought proper to enact. They forget that, as regards the collection of duties on imports, Congress has the right to prescribe by law what rules it thinks proper; and that all persons who choose to import goods subject to duty must conform to the rules which the law prescribes.

My opinion, therefore, is, that the petition shows no ground for relief.

BEATTY'S EXECUTOR *vs.* THE UNITED STATES.

Dissenting opinion, delivered by Judge Blackford:

I dissent from the judgment of the court in this case.

The petition, which is attached to this opinion, does not allege that the duties sued for were paid under protest.

The only question, therefore, which need be considered is, whether overpaid duties, paid without protest, can be recovered back by a suit in this court?

That question ought, in my opinion, to be decided in the negative.

The opinion on this subject, delivered by me a few days ago, in Sturges and others *vs.* The United States, is annexed to this opinion, and is to be considered a part of it.

The act of Congress of 1845, referred to in that opinion, after saying that nothing contained in the second section of the act of the 3d of March, 1839, "shall take away, or be construed to take away, or impair the right of any person or persons who have paid or shall hereafter pay money, as and for duties under protest, to any collector,"

&c., concludes as follows: "Nor shall any action be maintained against any collector to recover the amount of duties so paid under protest, unless the said protest was made in writing, and signed by the claimant, at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof."—(5 Stat. at Large, 727.) In the opinion in Sturges and others *vs.* The United States, I stated that I considered that act of 1845 to be as applicable to a suit in this court against the government for overpaid duties, as it is to a suit for that cause in any other court, against the collector. When that opinion was delivered I was not aware that the principle just alluded to had been recognized by any of the courts; yet, as it appeared to me so perfectly clear, I did not hesitate to adopt it. But I have since found that the same doctrine, namely, that a suit against a collector for overpaid duties is, in substance, a suit against the United States, had been expressly decided by the circuit court of the United States for the Maryland district. The following is the language of the court:

"For this suit, although in form against the collector for doing an unlawful act, is, in truth and substantially, a suit against the United States. The money is in the treasury, and must be paid from the treasury if the plaintiff recover. And as the United States cannot be sued and made a defendant in a court of justice without their consent, they have an undoubted right to annex to the privilege of suing them any conditions which they deem proper. And, in the exercise of this power, they have granted this privilege in the form of a suit against the collector, where duties are supposed to be overcharged, upon condition that the claimant, when he pays the money, shall give a written notice that he regards the demand as illegal, and means to contest the right of the United States in a court of justice; and stating also, at the same time, distinctly, the specific grounds upon which he objects. This is the condition upon which he is permitted to sue the collector, and thus to appeal from the administrative to the judicial department of the government. It is a condition precedent."—(Mason and Tullis *vs.* Kane, MSS.)

That opinion was delivered by Chief Justice Taney, and decides that a suit against the collector for overpaid duties is, in truth and substantially, a suit against the United States. And it also decides that such a suit cannot be sustained if the duties were paid without protest.

If that decision is correct, as it undoubtedly is, it shows conclusively that the suit now before this court, which is a suit against the United States for overpaid duties, paid without protest, is forbidden by the act of 1845, and, of course, cannot be sustained.

The claimant's main argument is, that his testator's money has been unlawfully obtained by the government, and that he has therefore a right to recover it back. The fallacy of that argument consists in assuming what is not true, namely, the unlawfulness of the collection of the money. The truth is, that the money having been paid without protest, was lawfully received by the collector and by the government.

Congress, as a matter of policy, enacted the aforesaid act of 1845;

and the Supreme Court of the United States have decided, as they were bound to decide, that, according to that act, duties paid without protest are not illegally exacted.—(Lawrence *vs.* Caswell, 13 Howard, 496.) The Court of Claims, like every other court, is bound by the law; and as the act of 1845 has forbidden any suit to be brought against the collector (which, it is decided, would be, in truth, a suit against the United States) for duties paid without protest, this court cannot, whilst that act is in force, sustain a suit against the government for duties so paid.

The act of 1845 fixes a reasonable time within which objections to the duties charged may be made, and says that if the objections are not made within the time, the duties shall not be recovered back. The object of that act is to secure prompt and final settlements relative to the duties, whilst the facts can be easily ascertained, and to prevent the continual disputes and frauds which would be occasioned by delay. The act appears to be founded on sound policy; but whether it is so or not is a question for the consideration, not of the courts, but of the legislature.

I am of opinion, for the above reasons, that this suit for over-paid duties, paid without protest, cannot be sustained.

DAVID WOOD *vs.* THE UNITED STATES.

Dissenting opinion, delivered by Blackford, J.

This is a suit for overcharged duties. The particulars of the claim will sufficiently appear from the following extract from the petition:

"Your petitioner respectfully represents, that during the years 1847, 1848, 1849, 1850, and 1851, he imported into the United States certain quantities of liquors in casks, on which importations duties were imposed and paid by him to the United States, not only on the value of the quantity of liquor, ascertained by gauge to be contained in the said casks when imported, but also on the value of the quantity of liquor which had leaked out of said casks on the voyage of importation, which was lost—which did not exist at the time when the duty was imposed—which was not and could not be imported into the United States. Your petitioner claims a return of the moneys exacted from him as import duties on such leakage or non-imported liquors."

There is no allegation in the petition that any objection whatever was made to the payment of the said duties.

No evidence has been taken in the case; and the only question now before the court is, whether the petition shows a good cause of action. The decision of a majority of the court is, that the petition is sufficient. From that decision I dissent. The ground of my dissent is, that the duties in question were paid without objection. The dissenting opinions heretofore delivered by me in the cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States, are referred to as a part of this opinion. In the examination of those cases, I

became entirely satisfied that the act of Congress of 1845, cited and relied on by me, was a bar to the claims; and as I consider that act to be a bar in those cases, I, of course, consider it to be a bar in this case.

Since the judgment of the majority of the court in the present case was rendered, I have met with a decision of the district court of the United States for the eastern district of Pennsylvania, which clearly shows that, even *before the act of* 1845, overcharged duties paid without objection could not be recovered back from the United States. Such payments made without objection are what the law denominates voluntary payments; and the law is well settled that money so paid cannot be recovered back. This principle not only applies to the present case, but is also applicable to the aforesaid cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States. The decision of the district court of the United States, above alluded to, is as follows:

An action was brought by the United States against Clement & Newman on a custom-house bond, dated 30th of June, 1841, conditioned for the payment of $793, that sum being part of the duties charged on an invoice of molasses imported, by the defendants, from Cuba into Philadelphia. The defendants claimed, among other things, a set-off of $345 22, being an alleged overcharge of duties previously paid by them. Mr. Watts, the district attorney, said in his argument that though the amount claimed there was small, the principle involved the restoration of an immense sum—not only fifteen or twenty thousand dollars, before paid by those defendants, but millions to other importers throughout the United States, paid by them voluntarily and without protest. * * * * * To the second credit the defendants ask for, we reply, first, that is covered by the same objections as the other; and, second, that the duties on which it is founded were paid voluntarily, and could not be recovered by the defendants, they having given no proof of compulsion or protest. Mr. Cadwalader, for the defendants, said: Both our claims, for credit or set-off, rest on these reasons, but the second is met by the additional objection that it was a voluntary payment without protest, and is therefore not recoverable against the United States. We reply that there is evidence of a protest to go to the jury, and that it was not a voluntary payment. It was required as a preliminary to entry, and was exacted *colore officii*, and is therefore not voluntary, and may be admitted as a set-off. The judge (27th of March, 1843) charged the jury as follows:

"If the jury believe that the value of the sugar or molasses embraces all costs and charges at the place of exportation, including the costs of hogsheads, barrels, boxes, &c., necessary to enable the parties to export it, then it will be unnecessary further to consider the question; should they think otherwise, then a new question arises for their consideration, and that is, where the duties on this shipment paid voluntarily and without objection, in consequence of the parties mistaking the law; if they were so paid, they cannot be recovered back, or deducted from the claim of the United States. It has been argued

that a payment to a public officer cannot be considered as a voluntary payment, as he holds the compulsory power in his own hands. This may be so, where the party paying objects, at the time of payment, to the propriety and legality of the charge. It is not necessary there should be a formal written protest, but there must be some objection, some notice that the claim is disputed, as the ground of objection or dispute may be removed or agreed to; but if paid without such objection, merely on a mistaken construction of the law, it is binding, and cannot be recovered back or set off against another demand. Was there any such notice or objection by the defendants at the time of payment? The only evidence on their part is that of Mr. Newman, who says there was no formal protest, but Mr. Clement informed him there was a mistake in calculating the duties, and that he (Mr. Clement) had been talking to Mr. Kern about it. Mr. Kern, who was a deputy collector, is since deceased; his testimony was not taken in his lifetime, and no witness is produced who heard the conversation. On the other side, Mr. Howell, deputy collector; Mr. Martin, the cashier; Mr. Bell, the ascertaining clerk; and Mr. McAdam, the bond clerk, have all been examined, and each of them say they never heard of any complaint by the defendant; and Mr. Howell states, that if such a complaint had been made, it would have been within his peculiar duty to examine it; but he knows of none. Still, this is a question of fact for the jury, and it is their province to decide it, the burden of proof being on the defendants. If you are satisfied that a duty was charged on the boxes, or hogsheads, over and above the value of the sugar, or molasses, at the time and place of exportation, and that such excess was paid by the defendants, they at the same time protesting or complaining against the justness or legality of the demand, then they are entitled to deduct the amount of such excess from the sum claimed in this suit. If, however, you believe that no excess was charged, or, if charged, that it was paid voluntarily, and without complaint, it is binding on the defendants, and they will not be entitled to the deduction." Verdict for the plaintiffs. (United States *vs.* Clement and Newman, Crabbe's Reports, 499 to 515.)

In the case just referred to, as before stated, the United States were the plaintiffs and Clement and Newman the defendants. The defendants claimed, as a set-off, a certain sum as having been paid for overcharged duties. The court decided in 1843, that if the duties had been paid without objection, the payment was voluntary, and could not be recovered back from the United States. That was the law, as said case decides, after the act of Congress of 1839, and before the act of 1845, relative to overcharged duties. When that decision was made, a verbal objection made at the time of payment was sufficient to enable the party to recover back from the United States, by way of set-off, overcharged duties. But by the act of 1845, no such recovery can be had, unless the objection was made in writing, and the grounds of the objection stated.

The above mentioned case of the United States *vs.* Clement and Newman was decided by a court of the United States, in which case the government of the United States was itself a party. The decision is entitled to great respect, and I cite it for the purpose of showing

that, independently of the act of 1845, there is no foundation for the present claim as described in the petition. That decision is in direct opposition to the judgment of the majority of the court in the present case.

The above are my reasons, in addition to those given in the cases of Sturges, Bennet & Co. *vs.* The United States, Beatty's Executor *vs.* The United States, and Spence & Reid *vs.* The United States, for my dissent, in the present case, from the judgment of the court.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 171.

GEOLOGICAL SURVEY OF OREGON AND WASHINGTON.

JANUARY 31, 1857.

Mr. THORINGTON, from the Committee on Public Lands, made the following

REPORT.

[To accompany bill H. R. No. 800.]

The Committee on Public Lands made the following report in reference to the general geological reconnaissance of Oregon and Washington Territories, completed, which was submitted to said committee for consideration.

In addition to the explorations in these Territories, examinations and collections of rocks, soils, and minerals have been made along previously unexplored routes to the Pacific, including an examination of the northern passes in the Rocky mountains. These passes were explored by Dr. John Evans, in 1850–'51, and a good wagon route across the main range discovered; also several important discoveries in relation to the courses of rivers, incorrectly laid down on previously published maps, and the value of their bottom lands for agricultural purposes, or an emigrant route; an exploration of the main range of the Rocky mountains, from latitude 45° north to the "British line," not following the Indian trails, but travelling by the compass; three trips in Oregon and Washington Territories, by different routes, from the boundary of California to the British possessions on the north, one east and two west of the Cascade mountains; three crossings of the coast range of mountains, in different latitudes; explorations in the northern ranges of spurs, intermediate between the main ranges of the Rocky and Cascade ranges of mountains. These explorations involve the crossing of eleven ranges of mountains, and the travel on foot or on horseback of 12,000 miles, with numerous lateral excursions, involving perhaps an equal distance.

Along these routes, specimens of the prevailing rocks, coals, soils, and ores have been collected for analysis, serving to develop the mineral and agricultural resources of the country; and generally barometrical measurements, made for the purpose of constructing geological sections of the country.

These journeys overland to the Pacific, and explorations in the mountain ranges and valleys of Oregon and Washington Territories, have not been made along highways or even Indian trails, but in the pathless prairies and the fastnesses of rugged mountain ranges, covered for the most part by dense forests, many of them previously untrodden by the foot of the white man, without guides or military escort for safety, and the transportation of supplies for comfort and convenience, but with two or three voyageurs, and a compass for a guide, in order to make the appropriations by Congress for this extensive and interesting field of labor go as far as possible in developing the resources of the country and adding to the scientific knowledge of this interesting region.

One great result of the survey has been to develop rich coal fields of semi-bituminous coal, suitable for all purposes, except sea-going steamers on long voyages. These coals crop out at various places from the British line to near Port Orford; and are in almost inexhaustible quantities. The existence of lead "in place," has been discovered, and other valuable ores; also "a bed," or stratum, of pure limestone, which previously it was supposed could not be found in Oregon. Gold has also been found in several localities in Washington Territory, as well as in Oregon; which proves, on examination of the geology of the country, to be in true gold-bearing regions.

Owing to the Indian war in those Territories, more than doubling the cost of supplies, &c., and the means of transportation, the necessary expenses have somewhat exceeded the estimate and appropriation by Congress. The following is a statement of the deficiency, and the sum necessary to complete the illustrations, and the cost of publishing the report, maps, &c.

Vouchers rendered to the department -	$16,065 87
Appropriation by Congress for the survey -	13,000 00
Balance due me - - -	3,065 87
For the completion of the analysis and preparation of the report for publication - -	2,700 00
	5,765 87

A careful estimate of the cost of publication, including geological sections of the country passed over, landscape views of scenery on changes of geological formations, general map, drawings of organic fossil remains, of which a very rich collection has been made; printing, binding, &c., &c., amounts to $15,300. Detailed estimates of which have been submitted to the department.* This estimate will publish the work in the style of Dr. Owens' Geological Report. For the reasons aforesaid your committee recommend the passage of the accompanying bill.

* The letter from the Commissioner of the General Land Office. dated January 17, 1857, to Hon. J Patton Anderson, is herewith submitted as a part of this report, as exhibiting the view taken of this subject by this department of the general government.

GENERAL LAND OFFICE,
January 17, 1857.

SIR: I have the honor to acknowledge the receipt of your letter of the 16th instant, calling for information as to the amount of appropriation necessary to publish the report of Dr. John Evans, United States geologist for the Territories of Oregon and Washington, so that it may be available to the public interest, and to communicate any other information in connexion with Dr. Evans' survey as I may think it necessary.

In reply, I have the honor to state that, from the report of Dr. Evans to this office, bearing date the 28th November last, it appears that the appropriations heretofore made for geological surveys, and completion thereof, in Oregon and Washington Territories, have been exceeded by actual expenditure by $3,065 87, to cover which liabilities, as well as the additional sum of $2,700, estimated by the geologist as the expenses which are being incurred in the completion of the analysis of minerals, coals, and earths, and the preparation of his report for publication, it will require an appropriation of $6,000; to which must be added an estimated expense for the publication of his final report on the geology of Oregon and Washington, (upon the supposition of 5,000 copies in quarto form, and in the same style of execution as the geological report of Dr. D. D. Owen, the extent of Dr. Evans' report being one half that of Dr. Owens',) the sum of $15,400.

With the view of providing the requisite means to defray the foregoing expenses, incurred, and to be incurred if sanctioned by Congress, the following estimates would be necessary:

1. For defraying the expenses incurred in making the geological reconnaissance in Oregon and Washington Territories, over and above the appropriations of March 3, 1853, and 1855, and for the completion of the analysis, and for the preparation of the final report of Dr. John Evans, the geologist, for publication..... $6,000
2. For publishing 5,000 copies of the geological report of Dr. Evans, the geologist of Oregon and Washington Territories, in quarto form, under the direction of the Commissioner of the General Land Office, and under the immediate supervision of the geologist..... 15,400

The report of Dr. Evans discloses the results of his reconnaissance and explorations, during four years and a half, highly favorable; rich coal fields of semi-bituminous coal have been found in various places on Puget Sound, at Coose bay, and other navigable waters, and in other inland places, of an inexhaustible extent; he has also discovered on a large tributary of the Columbia river mountains of limestone, marble, gypsum, &c.

The services rendered by the geologist to the country, in the exploration of vast ranges of Oregon and Washington Territories, and some of their localities, hitherto unvisited by scientific explorers, have been highly commended by repeated legislative resolutions in Oregon

and Washington Territories, and greatly appreciated by persons engaged in commercial, agricultural, and mining pursuits, who have urged the importance of geological explorations by Dr. Evans; and, considering his labors eminently useful in a scientific point of view, as well as of subserving the interest of the Pacific shore, by indicating the localities of the country possessing mineral and agricultural wealth to our enterprising citizens, whose commendations of Dr. Evans' explorations, in the opinion of this office, are worthy of the approbation and fostering care of the government.

The upshot of the matter is briefly this: Either what has been done in the way of exploration and development of coal deposits under appropriations by Congress is to go for nothing, and remain useless, or be brought to light in proper form, as proposed by further appropriation, to close the business, and make the results available.

The effect of the latter measure will be to open up new sources of trade to active industry in the extraction and sale of coal on the Pacific; thereby furnishing the material for propulsion, essential in our rapidly growing steam commerce on the Pacific, at cheap rates, instead of the enormous cost of the articles imported from the east.

Even in this respect the measure will contribute eminently to the advantage of that distant portion of our territory, whilst it will subserve the interest of the whole country.

I am, with great respect, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. J. PATTON ANDERSON,
House of Representatives.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 172.

MILITARY ROAD FROM FORT LEAVENWORTH TO FORT RILEY.

[To accompany bill H. R. No. 702.]

JANUARY 31, 1857.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred House bill No. 702, to provide for the construction of military roads and bridges in the Territory of Kansas, have, according to order, had the same under consideration, and respectfully report:

The committee is not aware that the construction of a road from a point near Westport, Missouri, to Fort Union, in New Mexico, is at this time specially required for any military purposes. It would doubtless be important to emigrants and to persons engaged in trade with New Mexico, and in other respects promote the interests of the Territories of Kansas and New Mexico; but as there are no considerations connected with the military service of the country which makes its construction at this time desirable, the committee decline to recommend it to the favorable consideration of the House.

In reference to the proposed road from Fort Leavenworth to Fort Riley they concur with the Secretary of War, that important military advantages would be derived from its completion. It would render the communication between these two military posts and depots more certain and rapid, and would facilitate the movement of troops to New Mexico and against the Indians along the Arkansas.

By an act of Congress, approved the 3d of March, 1853, the sum of $11,725 was appropriated "for bridges and establishing communications between Fort Leavenworth and the Republican forks of the Kansas river." Of this sum, we learn from the Quartermaster General, $9,181 56 has been expended. To bridge the streams on that route, together with the necessary cost of excavation, &c., would require, in his opinion, a further appropriation of $50,000.

The committee herewith annex, as a part of this their report, the letters of the Secretary of War and Quartermaster General on this subject

They accordingly recommend the accompanying bill as a substitute for the bill (*No. 702*) referred to them.

WAR DEPARTMENT,
Washington, January 28, 1857.

SIR: I have received and considered the letter of Hon. J. W. Whitfield, and the bill for the construction of roads and bridges in New Mexico, which you transmitted for the examination and opinion of the department.

In reply, I have the honor to state that important military advantages would be derived from the completion of the road from Fort Leavenworth to Fort Riley, provided for in the bill. It would render the communication between two *important* military posts and depots more certain and rapid, and would facilitate the movement of troops to New Mexico and against the Indian tribes along the Arkansas. It will be perceived from the letter of the Quartermaster General of the army, which is transmitted herewith, that it is estimated to cost $50,000.

A recent appropriation has been expended in the construction of a road from Fort Riley to the Arkansas—the extension of which to Fort Union, New Mexico, would still further promote some of the advantages to follow the completion of the road between Fort Leavenworth and Fort Riley, the establishment of Fort Leavenworth having reference to military communication in a northwest as well as southwest direction.

To emigrants, and those engaged in the trade with New Mexico, a road from Kansas City to the crossing of the Arkansas, on the route to Fort Union, would be preferred to that from Fort Leavenworth to the same point, since the distance by the two routes is nearly the same, and that from Kansas City has the advantage in starting from a point nearer to the large commercial cities than Fort Leavenworth; and by being located on the dividing ridge between the tributaries of the Kansas on the one side, and those of the Missouri and Arkansas on the other, avoids the crossing of difficult streams.

Very respectfully, your obedient servant,
JEFF'N DAVIS,
Secretary of War.

Hon. C. J. FAULKNER,
Committee on Military Affairs, House of Representatives.

QUARTERMASTER GENERAL'S OFFICE,
Washington city, January 22, 1857.

SIR: In reply to the note of the Hon. Charles J. Faulkner, of the Committee on Military Affairs of the House of Representatives, referred to this office yesterday with a letter of the Hon. J. W. Whitfield, urging the construction of certain roads within the Territory of Kansas, I have the honor to state that the only one of the routes proposed to be opened or improved, which is under the direction of the Quartermaster's Department, is that between Fort Leavenworth and

Fort Riley. To bridge the streams on that route, Congress, in 1853, appropriated $11,725, of which $9,781 56 has been expended, and a balance remains in the treasury entirely too small to be usefully applied. To bridge the streams on that route properly—namely, the Blue, Grasshopper, Soldier creek, and other small streams—together with the necessary expenditure in cutting down some hills on the route, which, it is said, cannot be avoided, will require, it is thought, not less than fifty or sixty thousand dollars. This route connects two great military depots, and the public interest would be greatly promoted by improving it, so as to render the communication more certain and rapid. All the other routes are important in their bearing on the national interests; they will, if opened, afford facilities to emigrants to reach the remote parts of the Territory, by which supplies for the frontier posts will be produced in their vicinity, and the necessity and expense of bringing them from a long distance will be avoided in a few years.

I return the papers referred; and I am, sir, most respectfully, your obedient servant,

THOS. S. JESUP,
Quartermaster General.

Hon. JEFF'N DAVIS,
Secretary of War, Washington city.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 173.

KANSAS—AUTHORIZES CONSTITUTION AND STATE GOVERNMENT.

[To accompany bill S. 356.]

JANUARY 31, 1857.

Mr. GROW, from the Committee on Territories, made the following

REPORT.

The Committee on Territories, to whom were referred Senate bill 356, *entitled "An act to authorize the people of the Territory of Kansas to form a constitution and State government," preparatory to their admission into the Union on an equal footing with the original States, and also House bill* 411, *for the admission of Kansas as a State, with the amendment of the Senate thereto, having duly considered the same, beg leave to report:*

In the act of Congress organizing the Territory of Kansas, the actual residents who might seek a home within its limits were assured that they were to be perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States. A prohibition on the existence of slavery that had remained in force for more than a third of a century was stricken off, and a vast empire was thrown open as a prize to be struggled for by free and slave labor.

The first legislature to be elected would, in a great measure, if not wholly, determine the supremacy of slave or free institutions in the expected State. What should be its character was then a question of absorbing interest, not only to those who expected to make Kansas their future home, but as well to the people of the whole country. To the settler seeking this Territory it was a question of vital interest whether he would be permitted to rear his children from the enervating influences of the institutions of human bondage; to free labor, whether it would be allowed a choice of home on the public domain, free from the degradation which contact with slavery everywhere brings upon labor and the laborer. To the people of every section, whether the policy of slavery restriction, inaugurated by the fathers of the republic, and continued uninterruptedly for more than sixty years, sanctioned bv every department of the government, legislative, executive, and judicial, was to be overturned, and a new doctrine, subversive of the guarantees of freedom and the rights and interests of free labor to be established in its stead.

Those who regarded the expansion of slavery as an element of po-

litical power hailed the repeal of the Missouri compromise as a most fortunate measure in furtherance of their cherished designs. The kind of institutions which should be fastened upon Kansas would affect the character of the federal government by the controling influence which it would have in determining the balance of power between the conflicting elements of free and slave labor. Hence, the same influence that secured the repeal of this restriction, planned and sought to execute the subjugation of Kansas to slavery. This plan, matured and stimulated by secret societies organized in the western counties of Missouri, even before the Territory was opened for settlement, developed itself at the election held therein for members of the legislature, by the appearance at the polls of almost five thousand men, who came in organized bands, and were so distributed through the Territory as to control every council district and every representative district but one. The invaders appointed, in most cases, their own officers of election, so as to control the supervision of the polls, and then, by force or intimidation, prevented actual residents from voting. Of the 6,301 votes polled at the election for members of the legislature, but 1,410 were legal voters.

A legislature elected thus by fraud and violence, sought to secure a self-perpetuation of its power by enacting laws ingeniously devised, in utter disregard of the political and constitutional rights of the people, operating upon future elections, upon the administration of justice, the organization of the courts, on the selection of all officers, and every source of influence and power so as to hedge in the usurpation in such a manner as to close every avenue of redress, and preclude all possibility of overthrow. The more effectually to guard against any loss or transfer of power, they denied to the people the selection of *all officers, civil, military, and judicial*, and continued the control of subsequent elections in themselves, by providing such discretionary power as effectually to keep the successive elections under the same influence, and thereby smother and defeat the popular will and thwart the action of a majority.

To prevent all political organized action, which in our form of government is indispensable to success, all opposition or constructive resistance was declared by its courts to be treason, and the most active leaders of the subjugated majority were imprisoned on such a charge, or driven from the Territory. Freedom of speech and the press was denied, under oppressive penalties, while peaceable assemblages of the people to petition the government for a redress of grievances were dispersed by the army of the republic at the point of the bayonet. Death or the felon's chain and ball was the penalty of free discussion on the only political question upon which there was a diversity of opinion among the people.

A usurpation thus conducted, and power thus obtained, it is unreasonable to suppose would be voluntarily relinquished by the usurpers. Nor is it reasonable to expect that under any remedy that might be provided the same spirit of injustice and wrong would not seize upon every opportunity afforded by legislative defects or omissions, to repeat the same process of usurpation in order to re-establish or perpetuate itself in the same ill-gotten power.

Large bodies of the men who have carried out this subjugation heretofore can with great ease, at any required moment, be thrown into the Territory and kept there under pretext of residence, difficult if not impossible of detection.

Such was the design in the original plan of subjugation, as developed in the evidence of one of the leading and prominent actors, Colonel John Scott, who held the office of city attorney of St. Joseph, Missouri. In his testimony before the Kansas committee, p. 932 of the report, he says: "It is my intention, and the intention of a great many other Missourians, now resident in Missouri, whenever the slavery issue is to be determined upon by the people of this Territory in the adoption of a State constitution, to remove to this Territory in time to acquire the right to become legal voters upon that question. The leading purpose of our intended removal to the Territory is to determine the domestic institutions of this Territory, when it comes to be a State, and we would not come but for that purpose, and would never think of coming here but for that purpose. I believe there are a great many in Missouri who are so situated."

Whenever the slavery issue is to be determined upon by the people of Kansas, in the adoption of the State constitution, new invasions, it seems, are to be made with sufficient numbers to consummate the original wrong.

Thus was the subjugation of this Territory and the compulsion of her domestic institutions resolved upon by a neighboring people with large resources and favorable opportunities for carrying out their purpose. In any measure of relief, therefore, that seeks a remedy for the wrongs of the people of this Territory through new elections, nothing but the most ample provision for the prevention of force and intimidation in every shape—of fraud and evasion of the law by voters—of fraud and complicity by the judges, as well as for the subsequent correction of all these things, should they occur in spite of the preventive measure—can hold out any hope of a fair and satisfactory result.

The Senate bill which has been referred to your committee is clearly insufficient to accomplish these ends. To any one at all familiar with the actual condition of the people of Kansas, it is evident that there is in that Territory, resulting from the circumstances briefly reviewed by your committee, an anomalous condition of things, so that the precautions ordinarily sufficient to secure a fair expression of the popular will would be entirely inadequate, and legislation deemed ordinarily sufficient would produce results very different from those to which we have been accustomed.

The time for holding the elections provided in the bill could, it is true, be changed by amendment, but only by abandoning the idea of holding the election on the same day as the Presidential election in the States, which was considered by the friends of the bill as one of its material and most valuable features. The time itself, it was urged, would be one of the great securities against invasion and fraud at the polls. By lapse of time the bill is stripped of this feature, which its friends regarded as so valuable. The bill recognizes a valid legislature for Kansas, and thus clothes five men with power to legislate for the Territory, by appointing all the judges of election and prescribing

the rules and regulations for conducting the same and making returns thereof, and gives them unlimited discretion in granting certificates of election. These five commissioners, for the time being, take the place of the legislature, which the friends of this bill claim was fairly elected, and is a valid legislature for the Territory. Yet the people are not to be entrusted with moulding their own institutions without the special superintendence of this administration and its appointees.

The guards and restraint against illegal and fraudulent conduct of election judges, instead of being provided in the bill, are placed at the discretion of the general administration, which has already endorsed and sustained the usurping government. The commissioners who were to appoint all the judges of election, prescribe the rules and regulations for conducting the same, are to be appointed by the President, and the rules and regulations for taking an enumeration of voters are to be prescribed by a member of his cabinet, and would, of course, be under his supervision.

In the judgment of your committee, there is little hope for the success of any measure of relief for the people of Kansas which is entrusted in its execution to an administration whose neglect of duty, or complicity with the wrong doers, has brought upon them all their woes.

No amendment of this bill would obviate this objection. For strike from it this feature and you will have destroyed the entire structure, and to make it of any efficiency, entirely different provisions would be necessary.

The enumeration of voters provided to be taken by this bill would, in all probability, be abused by the men who have been engaged in the past usurpation and subjugation, and thousands of names would fill the list of those who, like Colonel Scott, would be on the soil claiming to be residents, and who would have come for no other purpose but to make Kansas a slave State. How are the commissioners to exclude from their enumeration such men found by them on the soil at the time of taking the enumeration? Those five thousand men who invaded the Territory to usurp its legislative power could, with the same ease, secure a control of this election, for they have only to be in a position to secure their enrolment on the census, and all is accomplished. To ascertain that persons found in the Territory are not resident against their own declarations that they are, would involve the necessity of the contestants visiting the adjoining States to find unwilling witnesses, and when so ascertained, of sending process to compel their attendance, which, if possible to be done at all, could only be at the risk of life, and at a serious expenditure of time and money, to the exclusion of all other business for months. The extension of suffrage to persons outside of the Territory who claim to have been forced to leave on account of the troubles, and who shall return before a certain day, would be available for the five thousand invaders who voted at the election on the 30th of March, 1855, and might be taken advantage of by one party to make effectual a fraud, while, judging by past events, the other party would not be permitted to return.

The provisions to prevent force and violence to judges and voters is

to be exercised at the discretion of the President and his appointees, when the President has already witnessed one invasion and the exercise of violence, by which the will of a majority was subverted without any interference on his part to prevent, or measures to correct it. The penalties to punish such force or violence would be a dead letter in the statute book, while the courts of the usurpers are left in full vitality. The penalties for illegal voting would avail but little when the voter, as soon as he deposits his vote, returns to his home beyond the limits of the Territory. The constitution, formed under provisions of law so lax in their security of a free and fair exercise of the elective franchise, is not to be submitted to a vote of the people for ratification. A course unprecedented in the history of the country. No matter what enormities the constitution might contain, it is, when forced beyond the reach of the people, to be affected by it.

The bill relieves the people of none of their real grievances, but leaves the usurping legislature, and all its acts, except test oaths, in their original force. Not one of the many laws regulating, sanctioning and protecting slavery as an existing institution is changed, or in any way pretended to be; while it affords no ample security that all rights will not be again, as heretofore, trampled down at the ballot box.

Your committee cannot appreciate the necessity, propriety, or justice of requiring the people of the Territory to pass through the entire process of forming a State constitution, and incur all the risks of threatened fraud and violence and suppression of the popular will, which all admit is liable to occur, and to prevent which, confessedly, requires the most unusual and vigilant legislation, and the employment of the army of the United States for its enforcement, when that people have already adopted such a constitution and form of State government and submitted it to Congress.

In ordinary cases of the admission of a State, the only questions to be considered are the conformity of its organization to the requirements of the Constitution, the amount of its population, and the duration of its territorial pupilage. In this case, however, the urgent and overruling necessity of relieving the people from a state of subjugation revolting to all ideas of republicanism, and utterly inconsistent with, and subversive of, the principles of our institutions, should undoubtedly exercise a large influence, or even supersede objections of some weight in other cases, so far as those objections are to matters merely of discretion, and not relating to constitutional requirement.

In the report made by your committee on this subject at the last session, (and to which they beg leave to refer,) it was clearly shown that this proceeding was fully justified by past precedents, and had violated no constitutional provision. The territorial legislature has no power to confer or withhold the power of the people of a Territory to form a State government for presentation to Congress, with their application to be admitted as a State, and all acts of permission or prohibition of that territorial legislature are nugatory and void. This doctrine was settled in Jackson's administration in the case of Arkansas, (as shown in the report above referred to,) as well as in the debates of the Senate in the case of Michigan, and especially by the

constitutional doctrine then proclaimed by Mr. Buchanan and unanimously acquiesced in by the Senate. The position taken in these cases, that the power to form a State government for submission to Congress, including the provisional election of State officers, is derived from that clause of the Constitution which guaranties to the people the right to assemble and petition Congress for a redress of grievances; which involves, as a necessary consequence, the right to originate the movement by voluntary primary popular meetings.

It is sometimes alleged, however, that this application of the people is not to be tolerated if it originate in opposition or hostility to the territorial government. Your committee are unable to appreciate the point or meaning of this objection. Every application of the kind, in order to conform to the Constitution, must treat the territorial government as a grievance from which the application seeks relief, and must therefore be in opposition to it. If the meaning be that the territorial government is unfavorable to it, your committee have already shown that their assent or dissent is a matter of no moment whatever.

And even if this disfavor is so strongly manifested as to create a decided antagonism between the territorial government and the people, how can that in any way alter the rights of the parties? Or if the people, in the exercise of their constitutional privilege to complain against a "grievance," should complain in strong language inconsistent with some persons' ideas of good taste or propriety, it would be a singular mode of punishing them for an offence merely against good manners to deny them a right guarantied by the Constitution of the republic.

In the State constitution presented in this case there is nothing inconsistent with the federal Constitution, nor in opposition to the territorial government, except that, like all instruments of the kind, it necessarily supersedes such government. It contains no assault or encroachments upon the legitimate *rights* of such government. The most that can be said is, that it was adopted in bad temper towards the "grievance" to be redressed; and that temper might have been justifiable or unjustifiable, (an allegation which your committee deem it entirely unnecessary to inquire into, as it could in no way change rights;) or that some of the persons advocating the movement had committed offences against the territorial government laws, which your committee deem equally irrelevant and immaterial.

Having shown that there can be no real objection to granting the application on the ground of precedent or constitutional requirement, and the form of government being republican, it only remains to inquire whether it is justified by the amount of population, and is it desired by a majority of the people.

As to population, this point was fully considered and disposed of in the report of your committee at the last session, and they have nothing to add to the facts and arguments then adduced, except to state that all objections on this point seem to have been waived by both branches of Congress. The House passed an act for the admission of the State, and the Senate passed one for the immediate formation of a State government, in order to such admission, without respect to population,

and the bill referred to your committee is, therefore, as much liable to such an objection as is the substitute which they recommend.

The remaining point to be considered is, whether the majority of the people desire to be admitted as a State under the constitution presented. This your committee deem an important inquiry; for, however clear such a movement may be, the exercise of a constitutional right in strict conformity to constitutional requirements, and sanctioned by acknowledged and well established precedent, it is, nevertheless, a mere petition, and unless approved by a majority of those upon whom it is to operate the petition should not be granted. Whether it is so approved in this case is a fact which each member must determine for himself in the same manner as he would ascertain any other fact upon which it is necessary for him to form an opinion in order to guide his vote. This necessity is constantly imposed upon legislators, and it is an admitted principle that the absolute legal evidence which is required in judicial proceedings cannot be had, and is not expected or required. A rule that should require it would arrest all legislation. Books, letters, newspapers, public reports, declarations of individuals, and ordinary information of all kinds are daily received by legislators to establish facts on which they base their votes. Any information which is received as worthy of credit by a legislator, and which produces belief in the existence of a fact, is sufficient for his action. It is not necessary to cite the authority of any of the eminent statesmen who have announced this doctrine to sustain this position.

In view of the history of Kansas under the light of this doctrine, are not the facts sufficient to justify legislators in the belief that a majority of the people approve of the constitution as adopted and presented?

It is idle to attempt to disguise or conceal the fact, notorious to the whole country, that the great and only point of contest in the Territory between the two contending parties is, whether slavery shall be allowed or prohibited, and that the one party advocates this constitution because it prohibits it, and for the same reason the other party opposes it. To every man, then, who believes that the free State party is in a majority (no matter how that belief is induced) the petition is entitled to his support.

With the flood of information relative to Kansas that has for two years covered the whole country, and which has been sought with avidity by every person desirous of understanding its strange and eventful history, there are few, if any, men who have not formed, and even expressed, an opinion and belief as to which party is in the majority. The information and evidence upon this point is so extensive and voluminous, and so generally understood, that your committee deem it unnecessary to do more than refer to a small portion of it more immediately within their reach.

By reference to the report of the Kansas special committee at the last session, it will be seen that at the congressional election, in November, 1854, the pro-slavery party polled 2,258 votes, of which 1,729 were shown to have been illegal, although the investigation did not extend to all the districts, and the committee say that the settlers

took but little interest in the election, not half of them voting. In February and March, 1855, the census showed 2,905 voters, and on the 30th of March, 1855, the same party polled 5,427 votes, and the illegal votes were 4,908. At the election of October 1, 1855, they polled 2,721 votes, of which 857 were illegal, and a number of districts not investigated. In the first two of these elections the other party, as is well known, scarcely participated, and in the last not at all.

At the election of October 9, 1855, for congressional delegate, Governor Reeder received 2,849 votes, at a time when there was no occasion for illegal voting. The delegates who were elected to frame, and did frame, the free State constitution received 2,710 votes, none of which are shown to be illegal. The vote on the ratification of the constitution, December 15, 1855, was 1,778, of which only 46 were opposed, and the election was held directly after the first invasion to destroy Lawrence, and for that reason a full vote could not be polled.

The election at Leavenworth was interrupted by violence of the opposing party, and the poll books and ballot box destroyed, where the free State vote for delegates had been 514. So that the vote on ratifying this constitution was in reality some 2,300, notwithstanding the disturbed state of the Territory, and influences of intimidation that prevailed at that time, calculated to deter free State voters from voting.

This brief review of the elections held clearly indicates that the party advocating the free State constitution are in the majority in the Territory.

But the ever-recurring invasions from the State of Missouri at all the elections of the Territory, in numbers amounting from 1,700 to 5,000, to assist the pro-slavery party, and elect their candidates; the complicity of that party in the Territory with these invasions; the willing acceptance of this aid, and the laws passed by them when in power to exclude the free State voters from the polls, as well as the violence used by the Missourians and the pro-slavery men of the Territory to break up the election under the State constitution, and thus prevent an ascertainment of the numerical strength of the former, furnishes the clearest evidence in the nature of their own admissions of the superior numbers of their opponents.

It is not to be credited that these measures of fraud and violence so often repeated were unnecessary to carry the election.

The advocates of the Senate bill referred to your committee indicate, by their support of that bill, the opinion that the formation of a State government is the proper remedy to redress the great wrong that has been perpetrated upon the people of Kansas, and to restore to them their rights. This was the opinion of your committee in their report at the last session, and subsequent events have in no way changed or weakened it.

As there seems to be no material difference on this point between the friends of the Senate bill and those who advocate the substitute now recommended, your committee omit the arguments which might be adduced to establish the proposition, and refer only to the point on which difference of opinion exists. And that is whether the state government already formed shall be sanctioned and adopted, or shall the

people be required, under the present difficulties, to pass the ordeal of a similar proceeding again? Upon this point your committee think there is no sufficient reason for the latter course. The constitution already adopted, as has been fully shown, is in strict and undoubted conformity to constitutional requirements, is justified by numerous and authoritative precedents—is sustained by a population, agreed by the advocates of both measures to be sufficient, and which is expected by all to increase with great rapidity, and is approved by a majority of the people. What solid objection, then, can be urged against its adoption? That persons who are displeased with the prohibition of slavery which it contains, your committee can readily conceive, might prefer another trial of the question in the hope of a different result. But that will hardly be received as a reason why this government should withhold from any portion of the people their constitutional rights, and neglect to redress their wrongs.

Your committee therefore recommend, in lieu of the Senate bill authorizing the formation of a State government by the people of Kansas, a bill for the admission of Kansas as a State under the Topeka constitution.

GALUSHA A. GROW,
JOSHUA R. GIDDINGS,
SAMUEL A. PURVIANCE,
JUSTIN S. MORRELL,
JOHN J. PERRY,
AMOS P. GRANGER.

34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 174.

WILLIAM EASBY—HEIRS OF.

[To accompany bill H. R. No. 655.]

FEBRUARY 2, 1857.

Mr. BISHOP, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of William Easby, surviving partner of the firm of Easby & Hanly, report:

The petitioner represents that, agreeably to the order of Colonel De Russey, of the 17th of March, 1842, they shipped on board the schooner Elizabeth three hundred and six barrels of lime, for the use of Fortress Monroe; and that on her arrival at Old Point Comfort, in Virginia, she grounded, sprung a leak, took fire, and the lime was destroyed; that Colonel De Russey refused to pay for the lime, on the ground, as alleged by him, that the petitioners were bound to deliver the lime at *Fortress Monroe at their own risk.* The committee have examined the papers connected with this transaction, and can find nothing in them to justify the conduct of Colonel De Russey in refusing payment. The lime was shipped for and on account of Fort Monroe by the following order of Colonel De Russey:

"OLD POINT COMFORT, *February* 17, 1842.

"GENTLEMEN: I have to request that you will *ship, on account of Fort Monroe,* three hundred barrels of your lime, to be received on or about the 1st of March next.

"I am, with respect, gentlemen, your obedient servant,

"R. E. DE RUSSY,

"*Lieutenant Colonel of Engineers.*

"MESSRS. EASBY & HANLY,

Washington."

And the bill of lading taken by the shippers of the lime is in the following words, viz:

"Shipped, in good order and well conditioned, by Easby & Hanly, on board the good schooner called the Elizabeth, whereof is master, for the present voyage, Peter Jones, now lying in the port of Washington, and bound for Old Point, Virginia, viz: three hundred and six barrels of lime, and to be delivered in the like good order, and well conditioned, at the aforesaid port of Old Point, (the danger of

the sea only excepted,) unto Colonel De Russy, or his assigns, *he or they paying freight for the said lime* fifteen cents per barrel.

"In witness whereof, the master of the said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which bills being accomplished, the other two stand void.

"Dated at the city of Washington this 4th day of March, 1842.

"PETER JONES."

Colonel De Russey, in a letter written to Colonel Joseph G. Totten, Chief Engineer, United States, dated the 13th of January, 1844, labors to show that the shippers were considered by him, as well as themselves, as incurring all the risk of all the shipments made to him of lime from the 16th of March, 1839, to 1840; and to prove that the lime in question was in like manner shipped at the risk of the shippers, he makes the following postscript at the close of his letter:

"P. S.—A bill of lading is also sent to the department, to show that the freight and all other expenses were incurred by the *shippers*, and that one dollar and fifty cents charged per barrel for the lime was the price fixed by the gentlemen upon the delivery of the article at Old Point Comfort. D. R."

In this postscript Colonel De Russy seems to rely upon the bill of lading, copied into this report, as evidence that the shippers held themselves liable for all the risk and expenses incurred by the voyage. The committee, however, can discover no such evidence in the *bill of lading above quoted* as would prove "that the freight and all other expenses were incurred by the *shippers*," unless they were to adopt the construction which it is too evident was given to that instrument by Colonel De Russy, that is, taking the promise of the captain of the schooner, given in the usual form of a bill of lading, to deliver the cargo in like good order at Old Point Comfort, (the dangers of the sea only excepted,) as the *promise of the shippers*. It is owing to this mistake, probably, on the part of Colonel De Russy, that the claimant has been kept so long out of his money. The order of the colonel to *ship the lime for and on account of Fort Monroe* is positive and unconditional, and the practice of merchants places the risk of a voyage by sea upon the person ordering goods. When a merchant in New York ships goods to order of a merchant in Richmond, no one will dispute that the risk and expense of the voyage is incurred by the merchant ordering them, except so far as the risk may be shared by the captain of the vessel, in his capacity of *common carrier;* and in that capacity the captain of this vessel, for his inattention in suffering his vessel to get aground without a pilot, might probably have been held liable for the loss of the lime. Be that as it may, there is nothing in this case to show that the loss of the lime in question should be borne by the claimant; and therefore the committee report a bill for his relief.

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